From:	Gail Ravnitzky Silberglied
To:	*TE/GE-EO-F990-Revision;
cc:	Ember Farber;
Subject:	AAM Comments on Form 990 Instructions
Date:	Friday, May 30, 2008 1:07:20 PM
Attachments:	AAM Comments on Instructions - FINAL.doc

I am pleased to submit the attached comments from the American Association of Museums on the Draft Form 990 instructions. Please let me know if you have any difficulty viewing or accessing this file. Thank you very much.

Message from:
Gail Ravnitzky Silberglied

Director of Government Relations
American Association of Museums
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The American Association of Museums (AAM) represents the full scope of our nation's museums - including art museums, history museums, science centers, children's museums, zoos and aquariums, public gardens, and many specialty museums - along with professional staff and volunteers who work for and with museums.

Speak up for Museums!
Join Museum Advocacy Team® |
Email: mat@aam-us.org

AMERICAN ASSOCIATION OF MUSEUMS

May 30, 2008

IRS
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Ave., NW
Washington, DC 20224
Submitted via e-mail to Form990Revision@irs.gov

Re: Instructions on the Revised Form 990

On behalf of the American Association of Museums (AAM), I appreciate the opportunity to submit comments on the Revised Form 990 Instructions. As you may know, AAM is the only organization representing the full range of museums – art museums, history museums, science centers, children's museums, zoos and aquariums, public gardens, and many specialty museums – along with professional staff and volunteers who work for and with museums. AAM currently represents more than 15,000 individual museum professionals and volunteers, 3,000 institutions, and 300 corporate members. Our membership is as diverse as the collections contained in the museums we represent.

I also want to express my sincere appreciation for the care and consideration that has gone into producing the draft instructions. Although it is clear that the museum community – and the nonprofit community as a whole – will devote countless hours to filling out this newly expanded form, it is also clear that the IRS staff has gone to great lengths to produce comprehensive instructions to help nonprofits fill out the form as accurately and completely as possible.

There are, however, three areas in which we feel that the instructions could be improved:

1. Schedule B: Fair market value or estimate of non-cash contributions
Schedule B, Part II requires that organizations provide the fair market value or estimate of noncash contributions made by contributors listed in Schedule B, Part I. The instructions for Schedule B do not provide an exclusion from this valuation requirement for museums that do not report contributions as revenue, as permitted under generally accepted accounting principles (similar to instructions for reporting in Schedule D and Schedule M). We believe that this may have been an oversight.

Schedule M specifically states, "Museums and other organizations that do not report contributions of art, historical treasures, and other similar items as revenues, as permitted under generally accepted accounting principles should enter '0' in column (c) and should leave column (d) blank. The organization may explain in Part II that a zero amount was reported in Form 990, Part VIII, line 1g, because the museum did not capitalize its collections, as allowed under SFAS 116."

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A similar provision appears in Schedule D, "Pursuant to SFAS 116, certain organizations may choose one of two methods to report collections of art, historical treasures, or other similar assets held for public exhibition, education or research in furtherance of public service. An organization that does not recognize and capitalize its collections for financial statement purposes will report its collections on the face of its statement of activities, separately from revenues, expenses, gains, losses and assets. An organization that recognizes and capitalizes its collections for financial statement purposes will report its collections as assets and revenues based upon its fair value measurement. Line 1 pertains to collection items held by the organization in furtherance of public service, and line 2 pertains to collection items held by the organization for financial gain, as those terms are described in SFAS 116."

It would be helpful to specify this exemption in the instructions to Schedule B, as we assume the intent is to treat contributions that are not treated as revenue similarly throughout the form.

2. Schedule M: Identifying types of property

We have identified a number of types of property that are widely collected by museums and similar organizations, but are not included in the definitions of the types of property listed in Part I of Schedule M.

It would be helpful to have these types of property explicitly included in the instructions, so that museums can avoid creating numerous categories of property that may not be useful to the IRS or to the public and so that the collecting activities of museums with similar collections can be usefully compared.

a. Many museums and other similar organizations receive as donations extensive collections of archival material that are neither "rare books or manuscripts" that would fall within the definition for line 1, "Art—Works of Art," nor "Books and publications" that would fall within the category of line 4.

We understand that the IRS may be interested in having separately listed donations of creative works that are made by the individuals who create them. However, since a single donation of archival records may be voluminous and may include both materials created by the donor and materials created by others, inextricably mixed, we propose that archival material created by a donor who is an individual taxpayer be excluded from separate reporting.

We suggest that the instructions for line 4 be revised to clarify both issues, and read: "Enter information about contributions of all books and publications, including archival records. Archival records are defined as materials of any kind created or received by a person, family, or organization in the conduct of their affairs that are preserved because of the enduring value of the information they contain or as evidence of the functions and responsibilities of their creator. Do not include rare books and manuscripts that are reported on line 1 and collectibles that are reported on line 18."

We also suggest a parallel revision to the instructions for lines 25-28, by revising the third sentence as follows: "Items that are created by a donor who is an individual taxpayer, other than archival materials that are reported in line 4, are to be listed separately."

b. Natural history museums, zoos, and aquaria collect a wide variety of objects and specimens related to the natural world, that go well beyond the definitions in line 23 ("objects or materials received that related to, or exhibit, the methods or principles of science") and line 24 (archeological and ethnographical artifacts).

We suggest that the instructions for line 23 be revised to read: "*Scientific specimens* includes living plant and animal specimens and objects or materials that are examples of natural and physical sciences, such as rocks and minerals, or that relate to, or exhibit, the methods or principles of science."

For consistency, we suggest that the last phrase of the instructions for line 18 be revised as follows "but not art as defined above or historical artifacts or scientific specimens as defined below."

c. As is reflected in various locations in the Form 990, museums may accept and hold certain objects for public exhibition, education or research in furtherance of public service and therefore, consistent with generally accepted accounting principles, will not report revenue for those objects. Museums also may accept other property for financial gain and would report revenue for that property. On occasion, property accepted for each such purpose may fall within a single Schedule M "type of property" line. For example, in a tax year a sports museum may accept a donation of rare baseball cards for public exhibition (and, therefore, not report revenue for the baseball cards) and may also accept a stamp collection (which is outside of its collecting mission) to sell at a charity auction and use the proceeds for museum purposes. Pursuant to the instructions for line 18 of Schedule M, both the baseball cards and the stamps are "collectibles" and should be listed on that line. However, to list the number of contributions of "collectibles" in column (b) as "2," but to report as revenue in column (c) only the stamp collection would be confusing and misleading.

The instructions for lines 25-28 provide that those lines are to be used "to separately report other types of property that are not described above or reportable on previous lines." This description is followed by examples of uses of these lines.

We suggest that the instructions provide another example of the use of these lines, stating that they also may be used as follows, "If the organization reports on a previous line contributions which the organization does not report as revenues, as permitted under generally accepted accounting principles, and also receives other contributions of a similar type of property that are to be reported on the same line but which the organization has accepted for financial gain, list the contributions that are accepted for financial gain separately on these lines."

3. Core Form: Fundraising Events

"Fundraising Events" is not included in the Form 990 glossary. However, Schedule G, Supplemental Information Regarding Fundraising or Gaming Activities, requests in Part II information about "Events." The related instructions state, "Events include dinners/dances, door-to-door sales of merchandise, concerts, carnivals, sports events, auctions, and casino nights that are not regularly carried on. Events do not include sales of gifts or goods or services of only nominal value, sweepstakes, lotteries or raffles where the names of contributors or other respondents are entered in a drawing for prizes, raffle or lotteries where prizes have only nominal value or solicitation campaigns that generate only contributions. Events do not include sales of gifts or goods or services of only nominal value, sweepstakes, lotteries or raffles…."

Line 1c of Part VIII of the Core Form, Statement of Revenue, requires organizations to list revenue from "Fundraising events." The instructions for that line state, "Fundraising Events. Enter the total amount of contributions received from fundraising events, which includes—but is not limited to—gaming events, dinners, auctions, and other events conducted for the sole or primary purpose of raising funds for the organization's exempt activities." The example cites, "An organization announces that anyone who contributes at least $40 to the organization can choose to receive a book worth $16 retail value. A person who gives $40, and who chooses the book, is really purchasing the book for $16 and making a contribution of $24. The contribution of $24, which is the difference between the buyer's payment and $16 retail value of the book, would be reported on line 1c and again on line 8a (within the parentheses). The revenue received ($16 retail value of the book) would be reported in the righthand column on line 8a. If a contributor gives more than $40, that person would be making a larger contribution, the difference between the book's retail value of $16 and the amount actually given."

The example is not an "event" either generically or consistent with the instructions for Schedule G, Part II, for fundraising events, but suggests that this line is intended to include revenue from all "fundraising activities," as that much broader term, which is inclusive of the narrower "fundraising events," is defined in the glossary to the Form 990 ("Activities undertaken to induce potential donors to contribute money, securities, services, materials, facilities, other assets, or time. They include publicizing and conducting fundraising campaigns; maintaining donor mailing lists; conducting fundraising events; preparing and distributing fundraising manuals, instructions, and other materials; and conducting other activities involved with soliciting contributions from individuals, foundations, governments, and others." This is confusing to organizations that are required to calculate revenue from fundraising events, since it's unclear which fundraising activities must be included in the calculation.

It would be helpful if the example in the instructions for the Core Form, Part VIII, line 1c were changed to a clearer example of a fundraising event: for example, a dinner event where the admission is $150 and the value of the dinner is $50. Alternatively, it would be helpful if the definition of "fundraising event" used in Schedule G, Part II were included in the glossary, accompanied by the example of the dinner event or similar example, which would permit the instruction for line 1c to read simply, "Enter the total amount of contributions received from fundraising events."

We hope these suggestions will be helpful to the IRS in finalizing the instructions for the redesigned Form 990. Again, we want to express our appreciation to your office for the diligent work of making the instructions as clear as possible. As we have stated in previous comments, the redesigned Form 990 reflects a commendable effort by the IRS to address the goal of enhanced transparency for the nonprofit sector.

Please let me know if I can be of further assistance or if you need additional information.

Sincerely,

Ford W. Bell, DVM
President

From: Kinard, Lisa
To: *TE/GE-EO-F990-Revision;
Subject: Goodwill Industries International, Inc. - Comments on 990 Instructions
Date: Friday, May 30, 2008 1:26:40 PM
Attachments: Letter to IRS.pdf

Please see the attached. Thank you.

Lisa P. Kinard
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May 30, 2008

Lois G. Lerner
Director of the Exempt Organizations Division
Internal Revenue Service
Form 990 Redesign
Attn: SE:T:EO
1111 Constitution Ave.
Washington, DC 20224

Dear Ms. Lerner:

On September 14, 2007 Goodwill Industries International, Inc. ("GII"), a membership organization comprised of one hundred and sixty one (161) U.S. independent 501 (c)(3) member organizations, submitted comments regarding the redesigned IRS Form 990. Since then, three additional areas have been identified that we are concerned may result in a lack of clarity and inconsistent reporting by Goodwill members and similar organizations across the country. We thank the Internal Revenue Service (the "Service") for working with us to address these concerns, and hope the Service will consider removing any ambiguities on these issues in the instructions to the new 990. We would appreciate your review and consideration of the following:

ISSUE 1: Where is the proper place to report sales revenue of donated goods?

COMMENT: For Goodwill agencies, the processing and sale of items such as used clothing and household goods is a major and ongoing activity that accomplishes Goodwill's tax exempt purpose. Funds derived are utilized for training and job employment programs for our client population. These programs provide a valuable service to the community by training and employing the otherwise unemployable. Therefore the definition of program services revenue should be amended to include revenue from this program service.

If the definition of "program services revenue" in the new 990 instructions is amended to include *"a major, usually ongoing, activity of an organization that accomplishes its tax exempt purpose "*, then retail sales revenue for Goodwill and similar organizations would be properly included in that category. Goodwill and other similar organizations could then uniformly enter that revenue under the "program services" field on the 990 form in Part VIII, Statement of Revenue, Lines 2a- 2f.

ISSUE 2: Where should revenue be reported that is received from commercially-bid contracts performed pursuant to a tax- exempt purpose?

COMMENT: Goodwill organizations provide contracting services to private commercial companies in furtherance of our tax-exempt purpose. The activities performed in executing the contract obligations provide on-the-job training and employment for GII's client population, and any revenue derived should be considered "program service revenue".

ISSUE 3: Should program service revenue, referred to in Part VIII, Statement of Revenue, Line 2a-2f, require a corresponding business code designation from the Code of Unrelated Business Activity?

COMMENT: Such designation presupposes that the activities are not in furtherance of the tax exempt purpose of the organization. Program service revenue should properly include all revenue from the major activities of an organization that accomplishes its tax exempt purpose, and should not be reflected in the business codes.

We would welcome the opportunity to discuss these issues and to provide additional information on our concerns.

If you have any questions about these comments, please contact Lisa Kinard at 202-580-7494.

Sincerely,

Jim Gibbons
President and CEO
Goodwill Industries International, Inc.

From: Binita Naik
To: *TE/GE-EO-F990-Revision;
Subject: MCHC Comment Letter on Draft Instructions_2008 Form 990
Date: Friday, May 30, 2008 1:37:24 PM
Attachments: MCHC Comment Letter on Draft Instructions_2008 Form 990.doc

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Please find attached the Metropolitan Chicago Healthcare Council (MCHC)'s comment letter pertaining to the draft instructions for Form 990. Thank you.

Regards,
Binita Naik

Binita Naik
Coordinator, Government Relations
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May 30, 2008

By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

RE: COMMENTS ON DRAFT FORM 990 AND SCHEDULE H INSTRUCTIONS

On behalf of our more than 140 member hospitals and health care providers, the Metropolitan Chicago Healthcare Council (MCHC) appreciates the opportunity to submit comments regarding the draft instructions for Form 990 and Schedule H. We appreciate the IRS's efforts to work with the hospital community to address our common concerns and desire to improve the draft instructions with the following goals in mind: (1) enhancing transparency; (2) promoting compliance; and (3) minimizing the burden on filing organizations. MCHC fully supports the comments submitted May 15 to the Service by the American Hospital Association (AHA). To that end, below please find MCHC's comments to the draft instructions, which are based largely on those already submitted by the AHA and limited to Schedule H.

SCHEDULE H
MCHC suggests improvements in some areas of the Schedule H instructions to further minimize burden on filing organizations and to achieve greater clarity and consistency.

Part I: Charity Care and Certain Other Community Benefits
MCHC urges the IRS to clarify how community benefit activities ensure appropriate accounting for the wide variety of ways that hospitals provide community benefit activities. Following are suggestions:

1. It is unclear from the draft instructions how organizations filing Schedule H should account for community benefit activities being provided by related foundations or tax-exempt organizations within a multi-entity health care system. We urge the IRS to clarify how such community benefit activities should be reported.

2. Some hospitals may have developed licensed software programs to capture information in connection with various state community benefit reporting requirements. We urge the IRS to clarify that hospitals could use such software in lieu of the worksheets provided with the instructions to capture information in connection with various state community benefit reporting requirements.

Grants
If an organization makes a grant to a related organization, including to a foundation or other tax-exempt organization that is not required to file Schedule H, the organization should include such grant in Line 7(i) as long as it is restricted to be used to provide community benefit and was not funded by a restricted grant in the first place. This could also include a grant that was subsequently used by the related organization to fund in whole or in part a grant to another organization.

Reporting Benefits
MCHC supports the IRS' decision to remove bad debt expense from the total expense figure used in the denominator in Column (f) "Percent of total expense." The accounting principles adopted by the American Institute of Certified Public Accountants (AICPA) instruct hospitals to treat charges written off as bad debt as an addition to expenses rather than a deduction from revenue. The IRS should clarify that hospitals that follow other standards, such as those of the Government Accounting Standards Board (GASB), will not need to make the adjustment.

Under Line 7, Column (c) instructions, we suggest adding the words "if desired" to the end of the first sentence to ensure hospitals understand that these worksheets are optional. Under Line 7, Column (f) instructions, the appropriate accounting term is "bad debt expense."

Medicaid Provider Taxes
MCHC believes the wording is confusing in the instructions for Worksheet 1, Line 4 and results in a narrower interpretation than intended. MCHC suggests the following:

> Enter the amount of Medicaid provider taxes paid by the organization, if payments received from an uncompensated care pool or Medicaid Disproportionate Share Hospital (DSH) program in the organization's home state are intended primarily to offset the cost of charity care. If such payments are primarily intended to offset the cost of Medicaid services, then report this amount in Worksheet 3, Line 4(A). "Medicaid provider taxes," sometimes termed a "fee" or "assessment," or health care-related tax," means amounts paid or transferred by the organization to one or more states as a mechanism to generate federal Medicaid funds.

We also suggest that the IRS delete the last sentence because it does not add to the definition and creates the false impression that provider tax programs uniformly benefit individual providers.

On Worksheet 1, Line 4 and Worksheet 3, Line 4, delete the word "or."

Definition of Subsidized Services
MCHC recommends that the IRS not exclude hospitals from reporting under "subsidized services" on Schedule H certain specific types of services, including physician clinic services, skilled nursing services and ancillary services, provided that they meet the criteria outlined.

Part II: Community Building Activities
Under Line 8, we recommend that the IRS broaden the category to include other circumstances under which physician recruitment can be reported, such as the absence or shortage of a particular physician specialty. The IRS could amend the existing language to add after "underserved" the following: "or in other circumstances where there is an identified community need for a particular type of physician(s)."

Part III: Bad Debt, Medicare & Collection Practices
MCHC urges the IRS to incorporate language from the original "Highlights" document into the instructions themselves, recognizing that this section permits: (1) important and uniform reporting of bad debt expense information and an explanation of why certain portions of bad debt should be

considered community benefit; and (2) important information regarding Medicare revenues and costs, shortfalls or surpluses and an explanation of why certain portions should be treated as community benefit.

Section A

Line 4 requires an organization to provide the text of the footnote to the organization's financial statements that describes bad debt expense. MCHC understands that many health care organizations' financial statements do not contain footnotes relating to bad debt expense or any noted or similar designations. We suggest that the IRS include language in the instructions to this question and clarify that, if this is the case, organizations are not required to create footnotes in financial statements to satisfy this question.

Section B

Under Section B-Medicare, Line 8, the IRS has not provided any guidance to hospitals about the type of explanation it would find useful in better understanding which portions of Medicare underpayments constitute community benefit. To that end, MCHC recommends that the IRS incorporate the following language, or something similar, into the instructions:

> An organization's rationale may have any reasonable basis, including the amount of the shortfall that might otherwise have been used to support the programs included in Parts I or II, an estimate of the income range of the organization's Medicare patients, an estimate of the number of Medicare patients also eligible for the Medicaid program (dual eligibles), or whether the organization reports the amount of Medicare shortfall to any state government authority identified in Part IV, Line 8, or any other government authority.

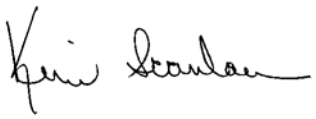
Under the introductory paragraph for Part III on page 9, we suggest that the IRS add the word "likely" after the word "who" in the first sentence to be consistent with the phrasing on the following page. MCHC also urges the IRS to allow hospitals the same options for accounting for Medicare costs as are available for other parts of Schedule H. To be consistent with the calculations on other parts of the form and provide a full accounting with respect to Medicare, Section B should capture the costs and revenues associated with *all* Medicare services and patients using the most accurate approach available.

Part IV: Facility Information

In the draft instructions, the IRS has proposed to adopt a definition of "facility" that is too broad. Under this broad definition, large health care systems that operate numerous hospitals will be required to report every building, structure, clinic, etc. Such a reporting requirement will amount to dozens of pages of information being submitted to satisfy this question. MCHC urges the IRS to adopt a definition of "facility" that is confined to "an entity that is licensed and/or certified as a hospital."

Thank you again for the opportunity to comment on the IRS Form 990 instructions. If you have any questions regarding MCHC's recommendations, please contact Scott Ziomek, Vice President of Government Relations, at (312) 906-6087 or **sziomek@mchc.com**.

Regards,



Kevin Scanlan
President/CEO

From: Wasson, Russell
To: *TE/GE-EO-F990-Revision;
Subject: NRECA Comment letter
Date: Friday, May 30, 2008 3:13:37 PM
Attachments: May 30 FINAL.pdf

Dear Sir of Madam:

Attached you will find a copy of our comment letter concerning the draft instructions for Form 990. If you have any questions, please don't hesitate to call.

<<May 30 FINAL.pdf>>

Russ Wasson
Director of Tax, Finance and Accounting Policy
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National Rural Electric Cooperative Association
A Touchstone Energy® Cooperative

May 30, 2008

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224
Via email

Re: Draft 2008 Form 990 Instructions, SE:T:EO

Dear Sirs and Madam:

The National Rural Electric Cooperative Association ("NRECA") is the not-for-profit national service organization representing approximately 930 not-for-profit, member- owned rural electric cooperatives. The great majority of these cooperatives are 501(c)(12) tax-exempt cooperatives that distribute retail electric service to more than 40 million consumer-owners in 47 states. NRECA members also include 65 generation and transmission cooperatives that supply wholesale electric power to their distribution cooperative member-owners. NRECA is itself a 501(c)(6) tax-exempt organization.

On behalf of our membership, we are responding to the request for comments to the draft Instructions which were released on April 7, 2008.

Introduction

NRECA strongly supports the Internal Revenue Service ("Service") in its efforts to revise the Form 990 to facilitate accurate, complete, and consistent reporting by tax-exempt organizations. We believe that the revised Form 990 is a significant step toward achieving that goal.

In particular, we commend the segregation of information relevant to certain types of tax-exempt organizations. Unlike many tax-exempt organizations, rural electric cooperatives are first and foremost not-for profit, member owned and controlled organizations that conduct business with and on behalf of their members. We appreciate any action the Service may take to minimize the time and administrative burden associated with preparing and filing Form 990.

While we commend the efforts of the Service and all the volunteers who worked on the redesign project, we believe that there may be opportunities in the Instructions for greater clarity and improvement and, with that in mind, we offer the following comments:

I. 2008 Form 990 Core (Highlights and General) Instructions– Draft April 7, 2008 Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

A. Five Percent Test for "Key Employees"

We note that page 2 of 14 of the draft Instructions for Part VII define a "key employee" as one who, in addition to having duties similar to an officer, "manages discrete segment or activity of the organization that represents 5% or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or ... has or shares authority to control or determine 5% or more of the organization's capital expenditures, operating budget, or compensation for employees."

We believe that a threshold of 5% for this purpose is too low and will result in numerous individuals being deemed to be key employees when they are simply carrying out duly delegated authority. We urge the Service to eliminate the percentage threshold requirement, or, in the alternative, raise the threshold significantly. A more meaningful threshold would be a percentage in the range of 30% to 40%; such a range would appropriately capture those key employees with duties similar to corporate officers generally. As a practical matter, corporate officers typically have spans of control which greatly exceed 5%; therefore, we urge the Service to either come up with a more meaningful numeric threshold or, preferably revert to the concept of materiality that was reflected in 2007 Form instructions.

We agree with the comments of the American Society of Association Executives that while the 5% threshold may have applicability in other arenas, e.g. benefit plan rules under section 416, it is ill-suited to apply to the broad range of structures and operations of all tax-exempt organizations using the Form 990.

B. Compensation Threshold for "Key Employees"

We note that on page 3 of 14 of the draft Instructions for Part VII, the Service is proposing that compensation threshold for key employees be $150,000 of reportable compensation. We also note on this same page that the compensation threshold for the

five highest compensated employees is $100,000 of reportable compensation. Further, the five highest compensated employees could include individuals who would otherwise be "key employees" but do not have reportable compensation of more than $150,000. With regard to this issue, we offer the following comments:

- We are pleased that the threshold for reporting key employee compensation has been raised to $150,000 of reportable compensation. However, we would also suggest that the same $150,000 threshold be used when determining the reporting requirements for highly compensated employees to avoid confusion and potentially harmful, but unintended consequences. We ask the Service to carefully consider this issue for the following reasons:

    - Rural electric cooperatives are businesses, and as such, are in competition for employees with other employers, including non-tax exempt employers, throughout the economic continuum. Disclosure of information related to highest compensated employees places tax-exempt businesses at a competitive disadvantage in designing compensation packages that will ensure the retention of a capable workforce.
    - Just as the Securities and Exchange Commission ("SEC") is concerned about disclosure impacts on the competition for employees, we believe that such impacts will be even more acute in rural and small-town communities, like those served by our members, and in the electric utility industry, which is already facing a shortage of qualified workers.[1] Disclosing the compensation of the highest compensated employees makes it more likely that employees and applicants facing a choice of employers would elect employment with an organization that does not have such disclosure requirements.
    - The disclosure of the compensation of the five highest compensated employees significantly exceeds both current and proposed disclosure requirements of public companies (as further discussed below).
    - The five highest compensated individuals of a rural electric cooperative, like other tax-exempt businesses, may include hourly employees that may be required to work a significant amount of overtime and are likely to change from year to year. The administrative burden and cost in monitoring and collecting the information necessary to identify and report such employees is expected to be significant.
    - Raising the threshold for reporting compensation of highly compensated employees to $150,000 of reportable compensation would synchronize their reporting with that of key employees and eliminate the "double jeopardy" that key employees that make more than $100,000 but less than $150,000 face in the current proposed instructions.

[1] *See, e.g.,* Utilities Brace for Worker Shortage, USA Today (May 16, 2007) *available at:* http://www.usatoday.com/money/economy/employment/2007-05-16-power-shortage-cover_N.htm.

- We submit that individuals have valid privacy concerns related to having their reportable compensation disclosed in a public manner, but this is particularly true for individuals that are not corporate officers or key employees. While greater authority, accountability and compensation may go hand-in-hand for corporate officers, directors and key employees, it is hard to make the same justification for non-key employees.

NRECA is not convinced that the public purpose to be served through compensation disclosure of individual employees that are not officers or key employees, particularly since the Service's proposal in the draft Instructions exceeds that required of or even proposed for public companies under the SEC's Executive Compensation Disclosure rules.[2] The SEC requested comments on key employee compensation disclosure and specifically asks whether the three highest compensated public company employees that are not officers should be included and if they should be identified by name. Commenters to the proposed rule objected that disclosure of the individuals involved would tempt competitors to hire away the named individuals and would place the registrant at a competitive disadvantage -- the same concern noted above that our members have for their highest compensated employees. The SEC also sought comments on whether the salary information of highly compensated employees should be disclosed unless it exceeds that of any named executive officer. We believe this approach more appropriately balances public policy interests in disclosure with individuals' privacy concerns. NRECA therefore urges the Service to consider adopting the SEC's approach in the final Instructions to the Form 990.

II. 2008 Form 990 Core (Part VI) Instructions– Draft April 7, 2008 Governance, Management, and Disclosure

A. Relationships Among Officers

On page 2 of 9 of the Part VI draft instructions, the draft discusses the required disclosures concerning relationships among officers on Line 2 of Section A. We fail to see why family relationships, in the absence of a business transaction, are relevant for purposes of federal income tax law. Typically, an organization is free to employ or seat on its governing board any individual who meets the qualifications established under state law and the organization's own articles of incorporation and bylaws. For closely-held organizations, membership organizations, or even organizations in sparsely populated communities, it seems highly likely that family relationships may exist. A "yes" response to the question is likely to create a negative inference, or invite further scrutiny or clarification. The Service appears to have considered this concern, because the draft Instructions only require relationships to be identified as business or family

[2] Executive Compensation Disclosure, Request for Additional Comment, 61 *Fed. Reg.* 53,267, 53,269 (Sept. 8, 2006)

"without greater detail." However, the question "opens the door" and it is not clear that any public purpose is being advanced by such disclosure.

B. Disclosure of Interests

On page 6 of 9, the draft Instructions for line 12b of Section B concern the disclosure of interests. We believe that the Instructions should also make it clear that a tax exempt organization is entitled to rely on the responses of the pertinent individuals. A tax exempt organization should not be penalized for a good faith effort to attempt to obtain information regarding conflicts from its directors, officers, trustees and key employees. Such mitigating language was included in an earlier draft and we believe that this caveat should be embedded in the final Instructions for the core form as well as in the Instructions concerning Schedule L, Transactions with Interested Persons.

III. Deferred Compensation

On page 1 of 13 of the Schedule J Instructions, we note that the concept of deferred compensation includes accruals and increases in actuarial value for listed persons, but only to the extent that the increases exceed market "time value of money" or "rate of return" increases (using 120% of the AFR as the standard). We assume by this instruction, you mean: include increases in deferred compensation plans that exceed 120% of the AFR. Which AFR is to be used as the benchmark? We suggest that the Instructions include a link to the appropriate webpage on which the applicable AFR can be found.

Also, we wish to point out that increases in actuarial values may not be available in the typical monthly statements received from plan fiduciaries and this requirement may make it necessary for filing organizations such as rural electric cooperatives to incur additional costs to obtain this actuarial data. We do not believe that this additional potential burden can be cost justified in light of the minimally tangential nature of such disclosure to the proper administration of the tax law.

IV. Schedule L Transactions with Interested Persons

The draft Instructions for Part II of Schedule L state, "Do not report the following in Part II: … receivables outstanding that were created in the ordinary course of the organization's business on the same terms as offered to the general public (such as receivables for medical services provided by a hospital to an officer of the hospital)."

- Does this same concept apply to Question 28 of Part IV of the Core Form? For example, if an exempt electric cooperative provides electric energy to its directors, trustees, officers, and key employees, and/or their family members, and/or entities on which they serve as a director, trustee, officer, or key employee, with this provision of electric energy being in the ordinary course of the cooperative's business on the same terms as offered to the general membership, does the cooperative have a "business relationship" with these individuals and/or

is it "doing business with" these entities? The answer seems to be "no." For instance, the draft Instructions for Part IV of Schedule L state, "charging of membership dues … are not considered business transactions for purposes of Part IV." Likewise, these draft Instructions state, "Do not report the following in Part IV: … loans reported (or not required to be reported) in Schedule L, Part II." To clarify that the answer is "no," the draft Instructions could be revised to state that a "business relationship" and "doing business with" do not arise by providing goods or services in the ordinary course of the organization's business on the same terms offered to the general public or membership.

- The draft Instructions for Part IV of Schedule L provide a "large board exception." Does this exception apply to Line 28c of Part IV of the Core Form? That is, does this exception apply to the filing organization only, or does it apply to the entity referenced in Line 28c also? For example, if a director, trustee, officer, or key employee of the filing organization serves on a "large board," but not on the executive committee, of an entity doing business with the filing organization, does the filing organization answer "no"?

V. General Observations Regarding Corporate Governance

While we believe it is an admirable goal of the Service to promote good corporate governance practices among tax-exempt organizations, we are concerned that the use of simple yes/no questions concerning governance and management policy may lead to "de facto" legal requirements. Further, we are deeply concerned that the form of questions regarding corporate governance and management policy, for which there is no "right" answer, may lead to a presumption of wrongdoing on the part of the tax-exempt organization in the absence of any legal or statutory requirement involving the issue in question. Even though the new Form 990 filer has ample opportunity to "explain" the answers to certain questions, such explanations may require filing organization to caveat its answer with the observation that there is no legal requirement to disclose such information. Even this clarification may be viewed negatively by the general public. While transparency is a most worthwhile goal, and one which we support, we would suggest that the Service frame these questions in such a manner as to remove the implicit weight of compliance involved by the use of simple yes or no questions. One option may be to make a note on the Form 990 itself that disclosure of some types of information is governed by state law and that the Service's inclusion of such questions is not intended to contravene other legal standards in the area of corporate governance or management policy.

VI. Glossary

When the draft Glossary defines "control" for the related organization test, there are two definitions: one definition for "nonprofit organizations, whether taxable or tax-exempt," and one definition for "stock corporations and other organizations with owners, whether

taxable or tax-exempt." An electric cooperative is a "nonprofit organization," but is also an "organization with owners." In the case of an electric cooperative, which definition of "control" applies?

Conclusion

We believe that the redesign of the Form 990 provides tax exempt organizations a great deal of useful insight into what the Service might view as best practices for tax compliant organizations, including governance practices. However, we are concerned that in its laudable efforts to enhance transparency, the Service may be excessively influenced by recent governance scandals within the tax-exempt and non-profit community. More information is not necessarily better if the privacy of non-key employees is compromised with little benefit to the public in terms of truly meaningful disclosure. Other disclosures while well intended, appear to reach into areas better left at the state or organizational level. While we understand and appreciate the Service's monumental effort in revising the Form 990, we believe that further improvement can be made, particularly for those tax-exempt businesses that must use it. Perhaps the Service should even consider designing a new Form 990 specifically for tax-exempt businesses, with disclosure requirements similar to those of public companies that file their financial statements with the Securities and Exchange Commission.

If you have any questions about our comments, we would be please to assist you in any capacity. Please call Russ Wasson (703) 907-5802, Ty Thompson (703) 907-5855,

Sincerely,

/s/ Russell D. Wasson
Director of Tax, Finance and Accounting Policy

From: Leslie Melby
To: *TE/GE-EO-F990-Revision;
cc: Shawn LaFrance;
Subject: Comments on Draft Form 990, Schedule H
Date: Friday, May 30, 2008 3:43:01 PM
Attachments: NHHA IRS Comments 05.30.08.doc

Attached are comments of the New Hampshire Hospital Association on Draft Form 990, Schedule H, and other instructions.

Thank you.

Leslie K Melby
Vice President, State Government Relations
New Hampshire Hospital Association
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Concord NH 03301
Phone: 603-225-0900
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May 30, 2008

By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Comments on Draft Form 990, Schedule H Instructions, and Other Instructions

On behalf of our member hospitals, the New Hampshire Hospital Association (NHHA) appreciates the opportunity to submit comments on the draft instructions for Form 990, Schedule H for Hospitals, and selected other sections of the draft instructions.

NHHA appreciates the efforts of the IRS in drafting the instructions and its willingness to address concerns from the hospital community. We encourage the IRS to continue to improve the draft instructions with consideration to enhancing transparency, promoting compliance, and minimizing the burden on filing organizations.

Our comments focus on Schedule H. We have also included several comments on the draft instructions for Form 990, Schedule J and Schedule K.

SCHEDULE H

We appreciate the IRS' efforts to minimize the burden on hospitals associated with the new Form 990 and Schedules, particularly Schedule H. However, there are areas in which the instructions need to be improved to further minimize burden and achieve greater clarity and consistency.

Part I Charity Care and Certain Other Community Benefits

To calculate amounts to be included in the Charity Care and Other Community Benefits table, the draft instructions provide that hospitals may use the worksheets provided with the instructions or other equivalent documentation that substantiates the information reported consistent with the methodology required in the worksheets. A number of hospitals have developed software programs to capture the information necessary to comply with New Hampshire's community benefit reporting statute. We therefore urge the IRS to clarify in the instructions that such software created or purchased by health care organizations is considered "other equivalent documentation," the use of which does not require a hospital to duplicate effort by capturing equivalent information on the worksheets.

Grants

The draft instructions do not require grants that an organization receives and uses to provide community benefits to be counted as "direct offsetting revenue" in computing "net community benefit expense" on the Charity Care and Other Community Benefit table. The draft instructions also provide that an organization may not report on Line 7(i) (cash and in-kind contributions to community groups) any contributions that were funded in whole or in part by a restricted grant from a related organization. The draft instructions provide that unrestricted grants or gifts to another organization that may, at the grantee organization's discretion, be used other than to provide community benefit may not reported on Line 7(i). It appears that if an organization makes a grant to a related organization, including to a foundation or other tax-exempt organization that is not required to file Schedule H, the organization should include such grant in Line 7(i), as long as it is restricted to be used to provide community benefit and was not funded by a restricted grant in the first place. This could also include a grant that was subsequently used by the related organization to fund in whole or in part a grant to another organization. Although this position can be discerned from the draft instructions, NHHA requests that the IRS clarify this point in the final instructions.

Reporting Benefits

We support the IRS' decision to remove bad debt expense from the total expense figure used in the denominator in Column (f), "Percent of total expense." The accounting principles adopted by the American Institute of Certified Public Accountants (AICPA) instruct hospitals to treat charges written off as bad debt as an addition to expenses rather than a deduction from revenue. Backing out bad debt expense from the total expense figure recognizes that charges for bad debt are not an "expense" but rather a way of accounting for the absence of revenue in the income statement. Leaving bad debt expense in the total expense figure would artificially inflate the denominator.

Under Line 7, Column (c) instructions, we suggest adding the words "if desired" to the end of the first sentence to ensure hospitals understand that these worksheets are optional.

Finally, some hospitals do not have a system for tracking receipts for each community benefit that would enable them to match up operating revenues for certain community benefit services. Further, the same cost center is used whether the hospital collects a minimal fee or the service provided is a community benefit. This cannot be separated out for the purpose of reporting in the Charity Care and Certain Other Community Benefits table.

Definition of Subsidized Services

Hospitals in New Hampshire subsidize a range of services to meet the specific needs of their communities as determined by the community needs assessments conducted at least every five years. Since its passage in 1999, the New Hampshire community benefits statute recognizes the varying needs of individual communities and requires that the community benefits offered reflect those needs.

The criteria that the IRS provides for "subsidized services" are comprehensive, and the examples cover a range of service offerings. However, we believe it is inappropriate to exclude certain specific types of services provided that they meet the criteria outlined. These include physician clinic services, skilled nursing services and ancillary services. For example, hospital-subsidized physician clinics and provider-based clinics often provide a critical access point to care for low income patients. As low income patients' access to physician practices declines, hospitals have increased their ability to meet this community need by offering free or reduced-fee physician care. Any subsidy required to operate hospital-subsidized physician clinics or provider-based clinic should be recognized and reported.

Likewise, when a skilled nursing facility or emergency access to specialty physician care fills a documented community need, any subsidies required should be reported as a community benefit.

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Part II Community Building Activities

Under Line 8, Workforce Development, we urge the IRS to broaden the category to include other circumstances under which physician recruitment can be reported, such as the absence or shortage of a particular physician specialty. The existing language should be revised to add after "underserved": "or in other circumstances where there is an identified community need for a particular type of physician(s)."

Part III Bad Debt, Medicare & Collection Practices

We urge the IRS to incorporate language from its "Highlights" document into the instructions themselves, explicitly recognizing, as the Service did in the previous document that this section permits:

- important and uniform reporting of bad debt expense information and an explanation of why certain portions of bad debt should be considered community benefit; and
- important information regarding Medicare revenues and costs, shortfalls or surpluses and an explanation of why certain portions should be treated as community benefits.

This addition will help preserve the IRS' publicly stated view of the importance of collecting this information.

Section A

We appreciate the clarification in the draft instructions that hospitals are not required to adopt or rely on the Healthcare Financial Management Association's Statement No. 15, as well as the IRS' assurances that a "No" response to the related question on Line 1 will not reflect poorly on the hospital or otherwise be used to target a hospital for an audit. If a hospital uses GAAP, there are

differences from the HFMA Statement No.15 that should be recognized. We also question that unless the AICPA has endorsed HFMA Statement No.15, it should not be included as a question on the form.

Line 4 requires a hospital to provide the text of the footnote to the hospital's financial statements that describes bad debt expense. The draft instructions further provide that footnotes related to "accounts receivable," "allowance for doubtful accounts," or similar designations may satisfy this reporting requirement. We understand that many health care organizations' financial statements do not contain footnotes relating to bad debt expense or any noted or similar designations. We suggest that the IRS include language in the instructions to this question to clarify that, if this is the case, organizations are not required to create footnotes in financial statements to satisfy this question.

Section B

Under Section B-Medicare, Line 8, the Service has not provided any guidance to hospitals about the type of explanation it would find useful to better understand which portions of Medicare underpayments constitute community benefits. To that end, we recommend that the IRS incorporate language suggested by the American Hospital Association into the instructions:

> An organization's rationale may have any reasonable basis, including the amount of the shortfall that might otherwise have been used to support the programs included in Parts I or II, an estimate of the income range of the organization's Medicare patients, an estimate of the number of Medicare patients also eligible for the Medicaid program (dual eligibles), or whether the organization reports the amount of Medicare shortfall to any state government authority identified in Part IV, Line 8, or any other government authority.

As the IRS is aware, this is an area in which hospitals have been provided little guidance in the past and in which guidance, such as that suggested above, would be most useful.

Under the introductory paragraph for Part III on page 9, we suggest that the IRS add the words "would likely" after the word "who" in the first sentence to be consistent with the phrasing in the instructions on page 10 for Line 3.

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We urge the IRS to allow hospitals the same options for accounting for Medicare costs as are available for other parts of Schedule H. The draft instructions are confusing and provide conflicting guidance. For example:

- By using the word "allowable cost" in Line 5, the IRS implies that hospitals should use Medicare cost reporting rules and accounting standards to calculate the Medicare shortfall. However, the inclusion of multiple choices on Line 8 implies that hospitals still have the ability to use the most accurate method available to them as they do elsewhere in Schedule H. The draft instructions provide no guidance on what those check boxes mean.

- Line 5 of Part III says to "Enter total revenue received from Medicare (including DSH and IME)," and the instructions provide further guidance on what revenues to include or exclude. One item that is specifically *included* is Part B physician services. On the worksheet supporting Line 6, the IRS says to take Medicare allowable costs (from the Medicare Cost Report). The Medicare Cost Report does not account for the revenues and costs of Part B physician services because they are paid under a different payment system. Thus the IRS is including Part B physician services in revenues, but excluding them from costs.

Medicare cost report accounting is very different from Generally Accepted Accounting Principles (GAAP) standards and, as such, will be very different from what hospitals determine is the most accurate costing method to use elsewhere on Schedule H. The Medicare cost report is designed only to produce cost estimates for a specific subset of Medicare programs. It excludes parts of the Medicare program that may contribute to Medicare gains or losses for the hospital like Part B physician services, as mentioned above, and the revenues and costs associated with Medicare Advantage patients. Worksheet 3 specifically asks hospitals to include the revenues and costs associated with Medicaid managed care patients.

To be consistent with the calculations on other parts of the form and provide a full accounting with respect to Medicare, Section B should capture the costs and revenues associated with all Medicare services and patients using the most accurate approach available.

FORM 990 – KEY EMPLOYEE

NHHA is concerned about the definition of "key employee." The definition in the instructions is too broad, and we therefore urge the IRS to adopt a more focused definition that would reduce the burden of providing this information. Hospitals can be large and complex organizations, and the new definition does too little to mitigate the burden associated with this new reporting requirement. As drafted, the revised definition could capture executives who have no "responsibilities, powers or influence over the organization … that is similar to those of officers, directors or trustees."

Both the percentage threshold (now 5 percent) and the control standard (management) need to be revised; a threshold well above 5 percent and a tighter control standard coupled with an upper limit on the number of employees to be reported should replace the current definition.

SCHEDULE J – DEFERRED COMPENSATION

The draft instructions to Schedule J require deferred compensation to be reported in the year earned, whether or not funded, vested or subject to substantial forfeiture, *and* in the year paid. Although final Schedule J includes column (F) for the reporting of amounts that were also reported in another year, NHHA believes that this addition does not address the unfairness and misperception associated with reporting compensation that is not yet considered to be income to the recipient. Thus, NHHA urges the IRS to require that amounts of unpaid, unvested deferred compensation be reported only in the year the compensation is paid to the recipient.

SCHEDULE K – SUPPLEMENTAL INFORMATION ON TAX-EXEMPT BONDS

The draft instructions to Schedule K require organizations to complete the Schedule for each outstanding tax-exempt bond that both had an outstanding principal amount in excess of $100,000 as of the last day of the tax year and was issued after December 31, 2002. The draft instructions further provide that refundings after December 31, 2002 of pre-2003 issues must be treated as post-2002 issues and reported on Schedule K. NHHA urges the IRS to clarify in the instructions that such reporting does not include information on expenditure and investment of proceeds or uses of bond-financed facilities occurring prior to 2003.

We appreciate the opportunity to submit our comments.

Sincerely,

Leslie K. Melby
Vice President, Government Relations

From:	Sue Pine
To:	*TE/GE-EO-F990-Revision;
cc:	jfrancis harringtoncompany; Hugh K. Webster; abower amcinstitute Jennifer Miller; rsnyder smithbucklin
Subject:	AMC Institute - Form 990 Instruction Comments
Date:	Friday, May 30, 2008 4:05:05 PM
Attachments:	990 IRS Letter 5.30.08 FINAL.doc

On behalf of the AMC Institute, please accept these comments regarding the draft Form 990 instructions. Thank you for providing this opportunity to share our concerns.

Suzanne C. Pine
Executive Vice President
Fernley & Fernley, Inc
100 North 20th Street, 4th Floor
Philadelphia, PA 19103-1443
D: 215-320-3701

Web Site: www.fernley.com

May 30, 2008

VIA EMAIL TRANSMISSION
Internal Revenue Service
From 990 Re-Design, S.E: T: EO
1111 Constitution Avenue, NW
Washington, DC 20024

To Whom It May Concern:

The AMC Institute, on behalf of its 160 association management company members, submits the following comments to the proposed instructions to the redesigned Form 990. Collectively, AMC Institute members serve over 3,000 associations and other nonprofit, tax-exempt organizations.

Business Relationships

Our first comment concerns the draft instructions under Part VI, Section A, Item 2. This Item in the Form 990 asks as follows:

> Did any officer, director, trustee, or key employee have a family relationship or business relationship with any other officer, director, trustee, or key employee?

The instructions define a "business relationship" extremely broadly as including any transaction valued at over $5,000. We respectfully submit that this instruction is both unworkable and unnecessary, at least with respect to trade and professional associations.

It is unworkable because business people and business representatives, who comprise the overwhelming majority of volunteer officers and directors of trade and professional associations, simply will not disclose their private business dealings, especially if those dealings are to be publicized, even in summary fashion, on a publicly available tax form. This is an intrusion into the business affairs of firms that often are in direct competition with each other, and understandably they are not likely to participate or cooperate.

Compelled disclosure of these business relationships is also unnecessary because it serves no useful purpose. When companies and individual business people within the same industry or profession do business with each other, they do so irrespective of their membership in a particular trade or professional organization and certainly independent of any fleeting relationship on a volunteer board of directors.

AMC Institute • 100 North 20th Street, 4th floor • Philadelphia, PA 19103-1443
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One unintended but predictable consequence of this kind of disclosure will be further discouragement of individuals from serving on association boards. It is increasingly difficult for associations under current circumstances to find volunteer leaders from their member companies and to convince member companies to provide and support representatives for officer and director positions. Mandating that these companies disclose their private business dealings will make those efforts exponentially more difficult.

For the above reasons, we respectfully suggest that the instructions be amended to except form the disclosure requirement private business relationships and business arrangements that arise in the normal course of business and that would, and do, take place regardless of service as an officer or director of an exempt association.

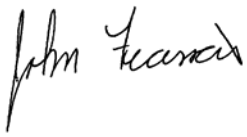
Form 990 Distribution

Part VI, Section A, Question 10 asks whether the Form 990 was provided "to the organization's governing body before it was filed?" The instructions state that this question may be answered in the affirmative only if the Form 990 was provided "to each voting member of the organization's governing body." In our view this requirement is unnecessary and duplicative, and it adds nothing to the performance of a board of directors' fiduciary obligations, while at the same time adding yet another time consuming topic of discussion unrelated to strategic planning and other matters on which a board should be focusing.

It would be entirely adequate, and we respectfully request that the instructions be amended to reflect this, if the Form 990 were provided to a subgroup of the board, such as a finance or audit committee. These are the committees that are charged with reviewing the finances of the organization, and they review those finances in much greater detail than the full board. A requirement that the Form 990 be distributed to the entire governing board is the equivalent of requiring bank statements and other times that are reviewed by an audit committee to then be reviewed a second time by the board of directors. A board receives financial statements and audit reports, which by any measure is comprehensive and sufficient. Adding the Form 990 and compelling detailed review and discussion of the Form 990, would be duplicative and unnecessarily time consuming and would add nothing to the ultimate well-being of the organization.

Thank you for your consideration of these comments.

Sincerely,



John P. Francis
President

AMC Institute • 100 North 20th Street, 4th floor • Philadelphia, PA 19103-1443
Phone: 215-564-3484 • Fax: 215-963-9785 • info@AMCinstitute.org • AMCinstitute.org

From: schibner
To: *TE/GE-EO-F990-Revision;
Subject: 990 Draft Instructions, Schedule L, Part IV
Date: Friday, May 30, 2008 4:18:53 PM

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990 Draft Instructions, Schedule L, Part IV

These comments relate to the situation in which the reporting organization has answered "yes" to Form 990 Core, Part IV:

Line **28** During the tax year, did any person who is a current or former officer, director, trustee, or key employee:

c Serve as an officer, director, trustee, key employee, partner, or member of an entity (or a shareholder of a professional corporation) doing business with the organization? If "yes", complete Schedule L, Part IV.

****

1. The above Core question is straight forward and fairly easy to understand. The comparable section of instructions for Schedule L, Part IV is nearly incomprehensible.

2. First of all, it is unfortunate that "interested person" is defined and redefined differently for each Part of Schedule L. Why not invent a better title for Schedule L? "Transactions with persons and entities"

3. The definition of "indirect business transaction" is beyond Byzantine. Less confusing:

"Indirect business transactions are transactions between the organization and
- a family member of a current or former officer, director, trustee, or key employee listed in Form 990, Part VII, Section A, or
- an entity more than 35% owned.....,whether individually or collectively, or
- an entity in which a current or former officer, director, trustee or key employee of the reporting organization is serving as an officer, director, trustee, key employee, partner, or member of the entity (or a shareholder of a professional corporation)."

4. If the purpose is to inquire about business relationships featuring important governance persons showing up on both sides of a transaction, then it makes little sense to exempt transactions between "same exempt status" clubs, business associations, and other types of tax-exempt, but nondeductible organizations.

This exemption also ignores that there are shady 501(c)(3) outfits that are designed to pass money around until it disappears into the pockets of their organizers; these are exactly the people that you want to see reported on both sides of aggregate transactions.

5. The threshold of $10,000 per INDIVIDUAL TRANSACTION seems to have some particular scenario in mind. In actuality the threshold, whatever the amount, should be an aggregate amount for the year. Jack Siegel is correct that "individual transaction" will lead to slicing and dicing of transactions until the reporting requirement disappears.

For example, it would not be unusual for a director of an organization to also be an officer of a vendor of goods or services. Is this what IRS, or the public, wants to know about?

If yes, then set an aggregate amount threshold. For instance, a charity may share an officer or director with its printer; each individual printing job may be less than $10,000, but the aggregate could well exceed $100,000 for the year.

6. "Business Transaction" seems to have a particular definition, rather than the "plain meaning" of the phrase. For instance, as worded, it appears to preclude vendors of goods. (This inference is further supported by the explanation of Column(d)).

Do you really mean:

"Business transactions include the providing of goods and services to the organization by vendors, independent contractors and professionals. Business transactions also include, [commas added] but are not limited to, contracts of sale, ... or ongoing from a prior year. Business transactions also include joint ventures..... .... for purposes of Part IV."

7. Schedule L, Part IV is deficient in its design.

The layout implies that the "person" was individually paid the transaction $. Most of the time, the transaction $ will have been paid to an entity.

The format instructions need to allow for inclusion of the name of the entity; even better, provision should be made to include the position of the person within the entity.

For example:

John Smith Director $60,000 Pres., Valley High Water Dist No
Susie Jones Former Officer $25,000 Owner, Jones Printing-booklets No
Sam Doe Past Pres. $12,000 Cramer & Doe Attys-services No
Sally Roe Current CEO $15,000 Indep Contr - graphic arts No

8. There is no Glossary entry for Interested Persons. Suggestion:

"Interested Persons
See Schedule L Instructions. Each Part of Schedule L has a definition of Interested Persons that is used only for the purposes of that Part."

Thank you for all your efforts (99.9999% successful!) on Form 990 20xx.
S.C. Hibner

From: Mary Gallagher
To: *TE/GE-EO-F990-Revision;
cc: Mary Gallagher;
Subject: Form 990 instructions comments 05 30 08
Date: Friday, May 30, 2008 4:20:44 PM
Attachments: Form 990 instructions comments 05 30 08.pdf

Below and attached are comments to the draft instructions to Form 990.

May 30, 2008

Via Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Subject: Comments on Instructions to Draft Redesigned Form 990 and Schedules

Thank you for the opportunity to comment on the instructions to the draft redesigned Form 990 and accompanying schedules recently published by the Internal Revenue Service (IRS). The following are comments of the Ohio Hospital Association (OHA) on behalf of its over 170 member hospitals and 40 health systems. In addition to the comments below, OHA endorses the detailed comments submitted by the American Hospital Association on May 15, 2008.

Overall Comment – Regulation by Implication

Throughout the Form 990, charitable organizations are required to answer questions about whether they have adopted certain policies or follow certain procedures. By implication, the public will deduce that such policies or procedures are legal requirements for all exempt organizations. For example, Part VI, Section B asks whether the organization uses a certain process for determining the compensation of the chief executive officer, yet

no such legal requirement exists. In fact, the IRS's own "rebuttable presumption" standard for executive compensation is not mirrored in these questions. Additionally, Part VI, Section A requires filers to identify the number of independent voting members of the governing board, yet no legal requirement exists for a certain number or percentage of independent board members. Similarly, Schedule J, Part I identifies certain compensation perquisites and severance practices, none of which are outlawed, but are suggested to be illegal by the Form 990. These various questions throughout the Form 990 and schedules are confusing and result in regulation by implication.

While we recognize the phrase "Sections A, B, and C request information about policies not required by the Internal Revenue Code" at the beginning of Part VI is an attempt to mitigate this problem, OHA recommends stronger language be used throughout the instructions to make clear which questions involve IRS requirements and which are merely recommendations. OHA applauds the IRS's various guidance to exempt organizations for good governance principles. However, exempt organizations meet IRS requirements and strive for good governance in diverse ways which should not be doubted by the public due to confusing reporting requirements.

Schedule H – Definition of Hospital

The draft instructions, particularly the Glossary, define a hospital as, "a facility that is, or is required to be, licensed or certified as a hospital under state licensing or certification laws." Ohio law requires hospitals to be "registered." (Ohio Rev. Code Sec. 3701.07.) Ohio hospitals are not licensed or certified. OHA recommends the instructions be modified to accommodate Ohio law.

Schedule H – Community Building Activities

Although the IRS chose not to include community building activities in Part

I of Schedule H under community benefits, the instructions should reflect the important community benefits these activities represent. For years, the vital community building activities of charitable hospitals and health systems have been included appropriately in community benefit reports. In Ohio, charitable hospitals and health systems represent the largest employers in most communities and their contributions in these ways should be emphasized when developing a picture of community benefit. The promotion of health and providing services that otherwise would not be offered absent government intervention, along with broad community stewardship, motivate Ohio hospitals. OHA recommends the instructions be clarified to describe community building activities as community benefits and that all charitable contributions to tax-exempt entities be included.

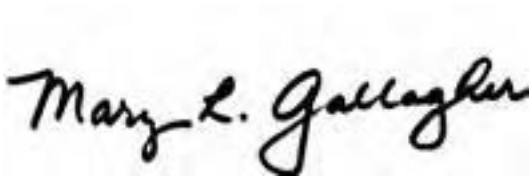
Schedule H – Bad Debt and Medicare Losses

Similarly, OHA recommends the IRS reconsider its position in the instructions and include bad debt and Medicare losses in the measurement of community benefit. Hospitals in Ohio on average receive less than 95 percent of their costs for caring for elderly and disabled Medicare beneficiaries. In addition, the majority of bad debt is attributable to low income patients and patients who would otherwise qualify for financial assistance, but refuse to give financial information, forcing hospitals to characterize those losses as bad debt.

The Ohio Hospital Association takes pride in the commitments of Ohio hospitals to their communities and to improving health care in Ohio. We welcome every opportunity to tell our stories and anticipate increased transparency will allow the public to better appreciate the many contributions of hospitals.

Thank you for your consideration of our comments and for soliciting public input during the process of revising the Form 990. The IRS's approach throughout has been constructing and refreshing. If you have any questions or would like to discuss these issues further, do not hesitate to contact me at (614) 221-7614.

Sincerely,



Mary L. Gallagher
Vice President and General Counsel

From:	Cynthia Wisner
To:	*TE/GE-EO-F990-Revision;
Subject:	comments on Form 990 Instructions
Date:	Friday, May 30, 2008 4:31:45 PM
Attachments:	SBM HCLS Comments on Form 990 Draft Instructionsfinal.DOC

Attached are comments from the Health Care Law Section of the State Bar of Michigan on the Instructions for IRS Form 990

Cindy Wisner
Trinity Health
(248) 489-6471

May 30, 2008

Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, D.C. 20224

Re: COMMENTS: DRAFT INSTRUCTIONS ON REDESIGNED FORM 990

On behalf of the Health Care Law Section of the State Bar of Michigan, thank you for the opportunity to comment on the draft Instructions to the redesigned Form 990. We appreciate the work that the IRS has put into the new form and Instructions and its openness to comments from the healthcare community.

Our Task Force, the members of which are listed on Exhibit A of this letter, respectfully submits the following comments for your consideration.

General Comments

As a general matter, we suggest including in the Instructions more information about the effect of a "no" answer. In addition to tax-exempt organizations, members of the public and the press will be reviewing the Form 990 filings and will be interpreting and attempting to understand the information that is disclosed based in some part on the Instructions. We applaud the IRS' hard work and significant effort to prepare the form and the Instructions for completion by several different types of tax-exempt organizations, and suggest that the Instructions are the opportunity for education and clarification about the disclosures and the IRS' use of the form.

1. Definition of "independent" in connection with directors of tax-exempt organizations.

In the core form and Schedule H the Instructions raise an issue regarding the composition of the governing board of a tax-exempt organization. The implication is that a significant number of "independent" directors should be on

the board. We suggest that the IRS adopt an existing definition of "independent." The definition of independent in the Instructions is new, and also is much narrower than the definitions (1) in the Internal Revenue Code for disqualified persons and (2) used by the IRS for purposes of the rebuttable presumption in TBOR2 (Section 4958 regulations). We suggest that the IRS adopt one of these two existing definitions for "independent." Alternatively, we suggest that the Instructions be revised to increase the payment amount that causes an employee or officer to be excluded from the definition of "independent." Further, we suggest that an appropriate amount of payment would be the limit set for highly compensated employees under IRC Section 414(q).

Board composition is raised again in the Instructions regarding community service. The implications from the board composition example in the Instructions for demonstrating community service could be misleading, causing tax-exempt organizations, the public and regulators to misinterpret the IRS definition. The Instructions seem to set a standard of independence that is not consistent with current state laws on conflicts of interest or prior IRS rulings or guidance. We suggest that the Instructions clarify that the IRS' collection of data about independent and local community board members is not a reflection of non-compliance for reporting tax-exempt organizations with non-private foundation and public charity status.

Further, we request that the IRS change the wording regarding the information being collected about board members' residence in the applicable local area. We note that many reporting organizations recruit and include individuals with national expertise on their boards. We also believe that the IRS would benefit from gathering more information about the clinical expertise of board members. Further, with respect to community service we note that the Instructions do not list patient care and health care activities as illustrative of community service, despite the significance given to such activities in revenue rulings and IRS guidance.

2. <u>Appropriateness of Schedules to Form 990</u>.

New information not previously reported publicly is requested in several Schedules to Form 990. Due to the newness of the Schedules it is not likely that the Instructions will be interpreted in the same way by all reporting organizations. Further, it is likely the public and press will review and rely on information disclosed in such Schedules. We again suggest using the Instructions for education and that the Instructions explain that much of the information contained in the Schedules is intended to be used by the IRS for its internal informational purposes. We request that the Service note in the Instructions that "yes" and "no" answers are not a score and do not reflect either the value of tax exemption or the benefits to the public and community of the activities of the reporting organization. We believe that the IRS should caution readers that until the

reporting tax-exempt organizations are able to establish industry practices and standardized data collection methods to compile and report the requested information, comparisons based on the disclosed information are not helpful to the public, and could in fact, be misleading.

3. **Schedule H.**

As an initial matter we note that in some states (other than Michigan) hospitals may be registered or certified. Further, non-acute care facilities are licensed as hospitals in some states. We suggest that the definition of hospital be more limited for data integrity purposes. In addition to mere state licensure categories, we suggest defining a hospital as a facility license, registered or certified as a hospital under applicable state law that would be eligible to bill government payment programs for inpatient services. In addition, to the extent such hospitals conduct community benefit activities through other related entities that they fund or control, the Instructions should be revised to specify that those activities are includable at the hospital's option in Schedule H, Part II, Line 9 (Community Building Activities – Other).

Based on comments made by IRS representatives in a call with the American Health Lawyers Association, we understand that the facilities to be listed in Part V are to be included because the community benefit activities of these facilities are to be reported in connection with the hospital(s) operated by the reporting tax exempt organization. However, the aggregation Instructions and the interchangeable use of the terms "hospital" and "facility" are confusing. It appears, for example, that question 3 should refer to the hospital(s), not a facility. In addition, more instruction is needed on aggregation for "yes" and "no" answers. What if the answer is "yes" for one hospital, but "no" for another? If a majority is to be used, is it based on the number of licensed beds or some other basis (i.e., number of employees, allocation of patient revenue)? We suggest that the IRS clarify what is intended so that hospitals can properly respond to this Question.

We believe that aggregate reporting of community benefit expenditures at the reporting tax-exempt organization level for all of its hospital facilities is helpful in providing information regarding at least a part of the community benefit the organization provides. Aggregate information also is consistent with the application process used to determine tax-exempt status for most, if not all, organizations. After review, study and analysis, however, it appears to us that an aggregate Schedule H will be difficult to complete and may not be of significant value to the IRS for data collection purposes because the charity care policies may vary from one licensed facility to the next, making "yes" or "no" answers potentially misleading on several questions in Schedule H. One option would be to require one Schedule H for all related licensed facilities under common control with appropriate explanation from the reporting entity (on Schedule O) of the extent to which answers to various "yes" or "no" questions are not uniformly applicable to all of its hospital facilities. We also suggest, as an alternative, that

the IRS permit the tax exempt organization to prepare one Schedule H per licensed hospital if it desires to do so for the "yes" and "no" answers, and complete the numerical section on an aggregate basis for the tax exempt organization on a single combined Schedule H for all of its hospital facilities.

We suggest that the Instructions on the cost accounting method clarify that the reporting organization may use any reasonable method that currently is in use by the reporting organization for any other purpose. We believe that the organization should disclose the method used and for what other purpose it is in use, rather than attempt to choose a method it deems most accurate. We further suggest that the Instructions specifically state that there is no standard method to avoid confusion to readers. Due to the non-comparability of data we suggest that the IRS further acknowledge that the data is being collected for the IRS' education about methods currently in use.

The draft Instructions for Schedule H, Worksheet 4 (page 19 of 23), would limit (potentially significantly) the amount of community benefit activities that a hospital is permitted to report on Schedule H. Specifically, the draft Instructions provide that:

> **Activities or programs may not be reported if** they are provided primarily for marketing purposes and the program is more beneficial to the organization than to the community; for instance, if the activity or program is designed primarily to increase referrals of patients with third-party coverage, **required for licensure or accreditation**, or restricted to individuals affiliated with the organization.

(Emphasis added.)

We request that the IRS clarify this Instruction regarding data requested about charitable activities. For example, in Michigan (and possibly other states) accepting Medicaid patients and payments for services from the Medicaid program is effectively required by state law for health planning purposes. See Mich. Comp. Laws § 333.22230. We suggest that state law requirements do not "invalidate" operation in a charitable manner entitling the reporting organization to recognition of tax-exempt status or make its activities any less of a benefit to the community. For example, if the organization accepts Medicaid for all services and not for only a limited number of services, this reflects operation in a manner beneficial to the community, in contrast to operation in a manner that primarily benefits the organization. We suggest that the IRS address state law and other variations by allowing the voluntary reporting of more information about the nature and extent of the tax-exempt organizations' charitable activities.

4. Schedule J.

We suggest that the Instructions for question 5 about contingent payments merely state that revenues include both gross and net revenues as reflected by the term “revenues" in the form itself. Further, we suggest that the examples are more in the nature of Instructions than illustrative. We suggest that the IRS clearly state that for reporting purposes the term “contingent” means an amount determined based on a percentage of revenue or income, perhaps based on any “revenues” reported on core form Part VIII.

We note that the form does not take into account benefits provided via a cafeteria plan. A cafeteria plan is one that allows an employee to choose which type of fringe benefits the employee needs. One employee may choose an entirely different set of fringe benefits than another employee chooses. We suggest that it would be deceptive to include these benefits in disclosures in the schedule because the information requested is not just W-2 reported income, but also pre-tax and other employee fringe benefits not reportable as income. We suggest that the IRS clarify the Instructions related to W-2 box 1 income. We note that IRS excess benefit guidance provides that if the benefit is not reported on Form 990 it could be an excess benefit, even though the benefit is not required to be reported on the W-2, is excluded from income, and not required to be reported on any other form.

5. Schedule L.

We support the large board exception in Schedule L for reporting of business transactions (Schedule L, Part IV) and urge the IRS to retain this exception. We believe it is a useful and appropriate exception in several respects, including (a) minimizing the recordkeeping burden (one of the stated goals of the revision) for organizations with larger governing boards (e.g., community-based foundations, alumni groups and even community hospitals where donors frequently end up on the board or board size grows with a series of mergers), and (b) focusing on information that is more relevant for tax compliance purposes – the potential for abuse in business transactions with the most active board members, those in a position to control or substantially influence what action is taken on behalf of an organization (which typically would be limited to the members of the executive committee in an organization with a large board).

6. **Question 10, Part VI, Schedule O**.

We recognize that the IRS’ view is that good governance practices are reflective of the likelihood of compliance with federal tax laws. That concern is reflected in a variety of governance-related questions in the final Form 990, particularly in Part VI of the Core Form. Although we are using the question about board review of the Form 990 (Core Form, Part VI, Line 10) to illustrate our point, we believe similar concerns apply to how the public may interpret answers to all of the governance questions.

Initially we note that the Instructions should require all reporting organizations to file Schedule O as the Core Form, Part VI, Line 10 requires Schedule O to be completed to address the Form 990's board approval process whether they answer the question "yes" or "no". With respect to the draft Instructions for Core Form, Part VI, Line 10, however, we believe additional explanation of the significance (or lack thereof) of a "no" answer is appropriate because there are a variety of approaches to preparation and review of Form 990 which may indicate good governance. A "no" answer to that question (or others) does not necessarily suggest a deficiency in governance practices, rather each organization's practices should be evaluated based on the relevant facts, circumstances and applicable state laws, including alternative procedures in effect at the organization**.**

In that regard, both state law and good governance practices allow conduct of organization activities at a meeting at which a quorum is present (even if some directors are absent and have not read or received meeting materials) and delegation to committees, experts and officers. Many boards currently do delegate significant activities to committees or advisors with special expertise for a higher level of quality of the review. In fact, many reporting organizations currently rely on review of tax questions or returns by the audit or finance committee. In fact, the regulations under Section 4958 already recognize the appropriate governance practice of obtaining and relying on expert advice (internal or external) in dealing with federal tax questions. See Treas. Reg. §§ 53.4958-1(d)(4)(iii) & -6(c)(2)(i). Conduct of activities in this manner often is a better governance practice than review by the full board. The requirement of a "no" answer for Core Form, Part VI, Line 10 if the pre-filed Form 990 is not given to each Board member in advance may not take into account other methods for the conduct of governance business by organizations, as permitted by good governance and applicable law. We suggest that the Instructions recognize that governing body review may be completed by a committee, an officer with expertise who is delegated the review and certification authority or by an external firm hired to conduct the review based on its expertise and experience.

Given the alternative ways in which good governance can be achieved, we request that the Instructions include clarification that a "no" answer to question 10, Part VI on the Core Form about board review or to other questions in Part VI of the Core Form is not a reflection of inadequate review. We also request that the IRS recognize in the Instructions for Line 10 that board review or an appropriate equivalent process can be accomplished through the methods outlined above. Finally, we request that, due to the public disclosure of the form, the IRS clarify that no current board review is required by the Code (nor are the various other characteristics, policies and practices in Part VI generally required by the Code) and a "no" answer is not reflective of the quality of the organization's governance.

* * * * *

On behalf of our Task Force, we thank you for the opportunity to comment on the Instructions to the redesigned Form 990. Should you wish to communicate with our Task Force, please contact either of the Co-Chairs of the Task Force, where noted below.

Sincerely,

Ann T. Hollenbeck
Co-Chair, Form 990 Task Force
ahollenbeck at honigman dot com

Cynthia F. Wisner
Co-Chair, Form 990 Task Force
wisnerc at trinity-health dot org

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From:	Scanlon, Colleen
To:	*TE/GE-EO-F990-Revision;
cc:	Desmond, Marcia;
	Scanlon, Colleen;
Subject:	Form 990 Instruction Comments
Date:	Friday, May 30, 2008 4:45:43 PM
Attachments:	CHI 990 Instruction Comments.doc

May 30, 2008

Mr. Ron Schultz
Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO

Catholic Health Initiatives (CHI) appreciates the opportunity to submit the following comments on the Draft 2008 Form 990 Instructions. Please find attached our comments.

Colleen Scanlon, RN, JD
Senior Vice President, Advocacy
Catholic Health Initiatives
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303-383-2693
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CATHOLIC HEALTH INITIATIVES®

A spirit of innovation, a legacy of care.

May 30, 2008

By Electronic Filing

Mr. Ron Schultz
Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, D.C. 20224

RE: Comments on Draft Form 990, Schedule H, and Selected Other Instructions

Dear Mr. Schultz:

Catholic Health Initiatives (CHI) appreciates the opportunity to submit the following comments on the Draft 2008 Form 990 Instructions. Catholic Health Initiatives is a national, nonprofit, faith-based system that includes 77 hospitals; 40 long-term care, assisted- and residential-living facilities; and two community health-services organizations in 20 states. Together, our facilities provided almost $480 million in community benefit in the 2007 fiscal year, including services for the poor, free clinics, education and research.

Our comments are focused on the following areas of the Draft Instructions: the Core Form; the Glossary; Schedule H; Schedule J; Schedule K; and Schedule R.

CORE FORM

Core Form – Part IV, Line 12

Issue:
Part IV, Line 12 asks whether the organization received an audited financial statement.

Recommendation:
The instructions should be modified to indicate whether an entity that is included in a consolidated audited financial statement along with its related entities has received an audited financial statement pursuant to this requirement, or whether the entity only answers "yes" if it has received a single company audited financial statement.

Core Form, Part VI, Section A

Issue:

Part VI, Section A, Line 10 asks organizations whether a copy of the final Form 990 was provided to the governing body prior to filing. This was changed from the June draft which required the governing body to have reviewed the Form prior to filing. Catholic Health Initiatives believes that the change from "reviewed" to "provided to" was a step in the right direction, as it recognizes that governing bodies may not always meet between the time that the Form 990 is finalized and when it is filed. However, the instructions as currently drafted seem to take away the flexibility that we thought the change in language in Line 10 was meant to address. In addition, the instructions could appear to create a fiduciary dilemma for members of the governing body who receive the Form 990. Once they receive it, what is their responsibility regarding the content? As we understand it, it is not the IRS's intention to create "new law" in the area of governance through the Form 990.

Recommendation:

To make it much clearer that there is no requirement for the governing body to do anything with respect to the Form 990 prior to filing, as well as to permit greater flexibility regarding what is required to be provided to the governing body (or a committee thereof) prior to filing, we would restate the instructions as follows:

> **Line 10. Governing body review of Form 990.**
> State "yes" to this question if a substantially completed draft of the Form 990 or a summary thereof was provided in paper or electronic form to each member of the organization's governing body or an authorized committee thereof prior to filing with the IRS. A "yes" answer does not require the governing body or authorized committee thereof to have reviewed the Form 990 or summary prior to filing with the IRS. Such review, if any, can be performed before or after the filing. A description of the process for such review, if any, should be provided on Schedule O. If no review was conducted state "No review was conducted."

Core Form – Part VI, Section A – Line 2

Issue:

Family / Business Relationships can involve professional services such as attorney / client or physician / patient. These professional relationships should not be reportable as they may tend to reveal information that, while not useful to the public, may be potentially damaging to the individuals whose information is disclosed. For example, if a physician board member is a mental health professional who does business with another board member, even declaration of a "business" relationship between the individuals could reveal that the individual board member is seeking mental health services from the physician board member, which should be a private matter.

Recommendation:
CHI believes the IRS should clarify that such information is not reportable on Line 2.

Core Form – Part VII – Volunteer exception

Issue:
It is unclear how an organization could be related if it is not owned or controlled directly or indirectly by the reporting organization or a related exempt organization.

Recommendation:
CHI believes the IRS should clarify the instructions by providing an example.

Core Form – Part VII

Issue:
The use of varying dollar thresholds for compensation disclosure makes for a burdensome tracking process. The compilation of this information will be further complicated by the $10,000 exclusion for certain other compensation items from a related organization. It is unclear why such additional steps are necessary in reporting related entity compensation.

In addition, the instructions are unclear on page 7 of 14 under the heading "$10,000 exclusions for certain other compensation items". The instructions seem to indicate that that tax deferred contributions to a defined contribution plan, the value of employer provided health benefits and tax-deferred employer contributions to a retirement / deferred compensation plan is includable …. "(unless the $10,000 exception applies)". Based upon the above wording, in the example in the instructions, the $10,000 exception could have applied to exclude these retirement benefits from disclosure. Yet, they were not excluded.

Recommendation:
CHI recommends the IRS explain how the $10,000 exclusion applies to tax deferred contributions, health plans and employer contributions to a retirement / deferred compensation plan. In addition, we believe the IRS should further clarify how the $10,000 exclusion operates or eliminate the $10,000 exclusion.

Core Form – Part VII, Section B

Issue:
Many organizations pay vendors centrally for all related organizations (with the central payor organization issuing the 1099), subsequently allocating the costs out to the various organizations.

Recommendation:
CHI recommends that the IRS provide clear instructions that the payor organization is responsible for reporting the compensation on the Form 990, rather than the related organizations that reimburse the payor for the cost of those services.

Core Form – Part IX – Line 5

Issue:
Part IX – Line 5 requires reporting on a fiscal and accrual basis for a fiscal year end accrual based taxpayer, as compared with the cash basis calendar year information required in Part VII. Requiring these two different measures of officer compensation (at two different points in time, using two different accounting methodologies for the same year) doubles the work in accumulating what was already a vast amount of officer / director / key employee compensation information. It would also seem that this is an unnecessary burden on the organization where the organization is already presenting calendar year information in Part VII.

Recommendation:
CHI recommends that the IRS permit organizations that are on a fiscal year to lump officer / director / key employee compensation in with "other compensation" on Part IX, effectively negating the separate disclosure of officer compensation in this location, but preserving the disclosure in Part VII.

Core Form, Part IX, Line 5 – Instructions, Example (3)

Issue:
This example states that the individual is a key employee. However, the individual only has compensation of $132,500. The definition in the instructions provides that an individual is not a key employee if compensation is less than $150,000.

Recommendation:
CHI recommends that the IRS clarify how the $150,000 parameter operates.

GLOSSARY

Definition of "Independent Member of Governing Body"

Issue:
The definition of "independent member of governing body" needs to be expanded to include a member of a religious order who serves on the hospital board and whose religious order sponsors the hospital and receives sponsor payments from the hospital. The current definition only includes members of religious orders who receive officer or employee compensation from the hospital. This needs to be expanded to cover non-employed members of religious orders who serve on the board without compensation, but who otherwise could be perceived to receive indirect benefit from the hospital because the religious order to which she or he belongs receives sponsorship or other similar payments from the hospital.

The definition of "independent member of governing body" lists four criteria, all of which must be satisfied to be considered independent. One of those criteria is:

> 3. The member did not otherwise receive, directly or indirectly, material financial benefits from the organization. . . . In any case, a transaction with an amount greater than $50,000 is per se material.

CHI is concerned that a payment by a hospital to its sponsoring order could be deemed an indirect material benefit to any member of the order. If any such members serve on the hospital's board, they could be deemed to lack independence. CHI does not believe that this is what the IRS intended because the IRS already provided an exception for members of religious orders who receive officer or employee compensation from a sponsored hospital.

Recommendation:
CHI believes this situation can be addressed by revising the second exception (that addresses members of religious orders receiving compensation) to read as follows:

> 2. The member has taken a bona fide vow of poverty and either (1) receives officer or employee compensation as an agent of a religious order or a 501(d) religious or apostolic organization, but only under circumstances in which the member does not receive taxable income (see, e.g., Rev. Ruls.77-290, 80-332); or (2) belongs to a religious order that receives sponsorship or payments from the organization.

Definition of Key Employee

Issue:
In the glossary, Key Employee is defined as anyone other than an officer, director or trustee who has responsibilities, powers or influence over the organization as a whole that is similar to those of officer, directors or trustees; 2) manages a discrete segment or activity of the organization that represents 5% or more of the activities, assets, income or expenses of the organization as compared to the organization as a whole; or 3) has or shares authority to control or determine 5% or more of the organization's capital expenditures, operating budget or compensation for employees.

This definition potentially pulls in many individuals who have no independent authority over the organization's finances, and virtually no responsibilities, powers or influence over the organization that is similar to those of officers, directors or trustees.

Recommendation:
Both the percentage threshold (now 5 percent) and the control standard (management) need to be revised; a threshold well above 5 percent and a tighter control standard coupled with an upper limit on the number of employees to be reported –preferably limited to three – should replace the current definition. If experience with the new form ultimately suggests a more expansive definition, the Service should revise it at that time.

SCHEDULE H

Worksheets 1 and 2

Issue:
Worksheets 1 and 2 are circular. For example, Worksheet 1 uses the organization's cost to charge ratio (from Worksheet 2) in computing community benefit expense. Worksheet 2 uses community benefit expense to compute the cost to charge ratio.

Recommendation:
CHI recommends that the IRS correct the circularity, or tell the taxpayer how the circularity is to be handled when completing the worksheets.

Part I, Line 3c (Other Income-Based Criteria)

Issue:
Lines 3a through 3c could be interpreted as implying that the Federal Poverty Guidelines (FPGs) are the preferred benchmark for establishing qualification for financial assistance. Although Line 3c asks the organization to state if it uses

other benchmarks, an unsophisticated reviewer of the Form 990 could make the mistaken assumption that organizations that use other benchmarks are somehow not playing by the rules. While many hospitals do use FPGs, others use the HUD Very-Low Income Guidelines, and others still, state guidelines.

When CHI first established its charity care policy it was found that establishing a household income scale based on FPG could not be leveraged across our system (i.e. what would be appropriate in rural Kentucky would not be appropriate in suburban Seattle).

Since HUD guidelines are specific to county designations, and since CHI has hospitals which reside in over 70 counties across the country, it was determined that the HUD Very Low Income Guidelines would best address the dispersion in the socio-economic geography of CHI.

As we assess and compare the impact of CHI using HUD guidelines we find that on average they compute to approximately 200% to 250% (and in some cases 300%) of FPG. In summary, it is no easier, nor more difficult; to obtain charity in a CHI hospital than it is anywhere else. Catholic Health Initiatives believes it is not the IRS's intent to put forth FPGs as the preferred benchmark and that clarification that other benchmarks are appropriate is warranted.

Recommendation:
CHI believes this can be addressed by adding the following language to the instructions for Part I, Line 3c:

> If applicable, described the other income-based criteria, asset test, or other means test or threshold for free or discounted care in Part VI, Question 1 of this Schedule H. While many hospitals use FPGs as the income-based criteria, other hospitals use other federal guidelines (such as the HUD Very-Low Income Guidelines), and other hospitals use state guidelines (such as guidelines used to qualify individuals for food or housing assistance).

Part I, Line 7g (Subsidized Health Services)

Issue:
Line 7g reports subsidized health services. This amount is calculated using Worksheet 6 or equivalent documentation. The instructions to Worksheet 6 state:

> Subsidized health services generally exclude ancillary services (that support inpatient and ambulatory programs), such as anesthesiology, radiology, laboratory departments, physician clinic services, and skilled nursing facilities.

CHI is perplexed as to why the IRS would exclude physician clinic services and skilled nursing services if, in fact, they are operated at a loss, meet a documented community need, improve access to care, or enhance public health. Many hospitals have satellite physician clinics that serve at-risk or underserved populations (e.g., free health clinics or pediatric clinics). Hospital-subsidized physician clinics often provide a critical access point to care for low-income patients. The Center for Studying Health System Change has documented that the percentage of physicians providing charity care and serving Medicaid patients has been steadily declining over the past decade. Research also has documented the negative health effects associated with the inability to access physician care. Hospitals often sponsor physician clinics that offer free or reduced-fee physician care to fill this gap. Physician clinic services clearly provide a benefit to the community, and any subsidies required to operate these clinics should be reported.

Many hospitals also offer skilled nursing facilities that serve at risk populations who otherwise would have difficulty receiving access to appropriate health services. For some critical access hospitals, skilled nursing units can represent more than one-half of total bed capacity. Skilled nursing facilities (SNF) provide an important part of the continuum of care for patients who no longer require the intensity of service provided by a hospital but cannot be discharged safely to their homes. Small rural communities often do not have a large enough population to support a freestanding SNF, leaving patients either to remain in the hospital longer than necessary or be placed in a SNF that is far from their home and family. Other communities may not have sufficient capacity, especially to serve low-income populations. Hospitals frequently step in to meet this community need, but these services often generate a financial loss. When a SNF fills a documented community need, any subsidies required should be reported as a community benefit.

As long as physician clinic and skilled nursing services meet the other subsidized health service requirements stated in the instructions to Worksheet 6, then the organization should be able to report it on Line 7g (e.g., the service meets an identified community need and if the organization did not offer the service, it would not be available in the community or would become the responsibility of the government or other tax-exempt organization).

Recommendation:
CHI believes this can be corrected by revising the instructions to Worksheet 6 to read as follows:

> Subsidized health services generally exclude ancillary services (that support inpatient and ambulatory programs), such as anesthesiology, radiology, and laboratory departments.

Part I, Line 7h (Research)

Issue:
Line 7h reports research costs. Research costs are calculated using Worksheet 7. The instructions for Worksheet 7 define research as "any study or investigation that receives funding from a tax-exempt or government entity of which the goal is generalizable knowledge that is made available to the public . . . ."

CHI believes that this definition, by limiting research only to studies and investigations funded by tax-exempt or government entities, is too narrow because there are examples where industry-sponsored research studies provide public benefit and generalizable knowledge. For example, it would prevent counting drug-company-sponsored research on orphan drugs, which is inconsistent with the Orphan Drug Act of 1983 (which was specifically adopted to encourage research for drugs affecting small populations when it would not otherwise be economically feasible). CHI does not believe this was the IRS's intent.

Recommendation:
CHI believes this can be corrected by revising the instruction in Worksheet 6 to read as follows:

> "Research" means any study or investigation of which the goal is generalizable knowledge that is made available to the public . . . .

Part III, Section C, Line 9(b) (Collection Practices)

Issue:
Part III, Section C, Line 9 (b) asks whether "an organization's collection policy contains provisions on the collection practices to be followed for patients who are known to qualify for charity care or financial assistance." (Emphasis added.)

However, the instructions for Line 9(b) do not track the language of the question on Line 9(b) at all. First, the instructions broaden the question to cover all patients, not just those who qualify for charity care or financial assistance. Then, contrary to the question itself, the instructions state that the question covers "those who would likely qualify" as opposed to the question's wording of "those who are known to qualify".

Recommendation:
CHI believes this can be corrected by revising the instruction in Worksheet 6 to read as follows:

> Answer "yes" if the organization's written debt collection policy contains provisions regarding the types of practices to be used for collecting amounts due from patients, including those patients the organization knows qualify for charity care or financial assistance. For example, if the policy states that the organization will not commence a collection action against a patient without prior internal review, then the organization may answer "yes" to this question.

Part V (Facilities)

Issue:
The instructions define the term "facility" for purposes of reporting on Part V as all campuses, buildings, structures, or other physical locations where the organization performs medical or hospital care. This definition is overly broad and contrary to the language of Part V of the Form itself, which contains checkboxes that pertain only to types of hospitals. CHI does not understand why the IRS needs an organization to report every discrete location or address at which such services are provided. CHI believes that the effort required to list every address of every medical or hospital activity, including each physician's office address, increases the administrative burden on reporting organizations without providing any useful information to the IRS or to the general public reviewing the form.

Recommendation:
CHI strongly believes that for the sake of consistency, there should be a bright-line test for those facilities that need to be reported on a location-by-location basis in Part V. CHI recommends that organizations be required to report any facility that is required to be licensed and/or certified as a hospital under applicable state law. We also recommend clarifying that community benefit provided by the organization through facilities not licensed/certified as hospitals continue to be otherwise included in Schedule H.

Part VI – Questions 7 and 8

Issue:
The term "affiliate" is used in Question 7 and the term "related" is used in Question 8. The term "related" is fairly well defined in the instructions, whereas affiliate is more loosely defined. Where there are multiple groups of locally based "health systems", it is unclear whether the group of affiliates consists of the locally based group or of the larger, country-wide group commonly controlled by

the parent. Furthermore, it is unclear whether in a group ruling situation the affiliates are all organizations covered under the group ruling.

Recommendation:
CHI recommends that the IRS use consistent, well defined terminology when asking for information regarding related entities throughout the instructions. In this case, we recommend that the IRS substitute the term "related" for the term "affiliate" in the instructions to Question 7.

SCHEDULE J – DEFERRED COMPENSATION

Issue:
The draft instructions to Schedule J require deferred compensation to be reported in the year earned, whether or not funded, vested or subject to substantial forfeiture, *and* in the year paid. Although final Schedule J includes column (F) for the reporting of amounts that were also reported in another year, CHI believes that this addition does not address the unfairness and misperception associated with reporting compensation that is not yet considered to be income to the recipient.

Recommendation:
CHI urges the IRS to require that amounts of unpaid, unvested deferred compensation be reported only in the year the compensation is paid to the recipient.

SCHEDULE K – SUPPLEMENTAL INFORMATION ON TAX-EXEMPT BONDS

Issue:
The draft instructions to Schedule K require organizations to complete the Schedule for each outstanding tax-exempt bond that both had an outstanding principal amount in excess of $100,000 as of the last day of the tax year and was issued after December 31, 2002. The draft instructions further provide that refundings after December 31, 2002 of pre-2003 issues must be treated as post-2002 issues and reported on Schedule K.

Recommendation:
CHI urges the IRS to clarify in the instructions that such reporting does not include information on expenditure and investment of proceeds or uses of bond-financed facilities occurring prior to 2003.

SCHEDULE R

Page 4 (Group Exemption)

Issue:
The instructions make it clear that a member of a group ruling (including a subordinate) is not required to list any subordinate organizations (or members of the group) in Part II (which governs related exempt organizations). This is very helpful. However, the IRS makes no mention of how an entity in a group ruling handles related partnerships, corporations and trusts.

Members of a group ruling may have for-profit subsidiaries. Due to the attribution rules, ownership of a for-profit subsidiary of a subordinate in a group ruling can be attributed to most other members of the group ruling. Thus, in a group ruling such as the Catholic Church, a subordinate entity listed in the Catholic directory that files its own return would potentially be required to list all of the for-profit subsidiaries of all of the other tax-exempt organizations that are part of the Catholic directory. This cannot be what the IRS intends.

Recommendation:
CHI recommends that the IRS change the language to require members of a group ruling filing a separate return to disclose only those organizations over which they have direct control.

Page 4 (Indirect Control)

Issue:
The instructions on page 4 say that control can be indirect. For example, if the organization controls Hospital A, and Hospital A controls Hospital B, then the organization indirectly controls Hospital B. In other parts of the Form 990 and instructions, control with respect to the filing organization often refers to several types of relationships: the organization controls another, the organization is controlled by another, or the organization is under common control with another. CHI believes that the definition of indirect control is only referring to one entity controlling another, who in turn controls a third party, but that nowhere in the chain does common control or control by another factor in. The following examples explain our concern:

- Example 1: If the organization and another nonprofit each own 50% of a joint venture (not meeting the definition of control) but both entities are managing partners (which meets the definition of control), then the hospital controls the joint venture and the joint venture is controlled by the other nonprofit. Is the other, unrelated nonprofit an indirectly-controlled entity such that the reporting organizations has to include information about the other nonprofit?

- Example 2: If the organization is in a joint venture with a for-profit, and hospital owns more than 50% (meeting the definition of control) and the for profit is the managing partner (also meeting the definition of control) then the organization controls the joint venture and the joint venture is controlled by the for-profit. Is the for-profit a related entity such that the reporting organization has to include information about the other for-profit?

Recommendation:
In both examples, CHI believes that the reporting organization should not have to report any information about the nonprofit or for-profit joint venture partners, but CHI believes the IRS should clarify this.

Parts III and IV (Disproportionate Allocations)

Issue:
The instructions use the term "disproportionate allocations" as being those allocations or distributions that differ from the organization's investment. The partnership regulations, however, talk about allocations that have "economic substance."

Recommendation:
CHI believes that the instructions dealing with disproportionate allocations should be tied to or reference the treasury regulations on economic substance. In other words, organizations would have to report distributions and allocations that lack economic substance rather than ones that are disproportionate (as disproportionate allocations can have economic substance under the regulations).

Parts III and IV (Share of Income and Assets)

Issue:
In both Parts III and IV, the organization is supposed to report the share of income of the related entity. With a simple example, that sounds easy. For example, if the organization is an 80% member in an LLC that is an 80% partner in a partnership (both of whom are taxed as partnerships), then presumably the organization would report a 64% share of the partnership's income and assets (80% of 80%=64%).

However, it gets more complicated moving down multiple generations of the corporate family tree and when different types of organizations are involved. If the hospital owns a 75% stake in a for-profit corporation (the other 25% of which is owned by an unrelated nonprofit hospital), and the for-profit corporation owns 100% of the preferred membership interests in an LLC (giving it certain preferred distribution rights) and 100% of the common membership interests are owned by physicians (giving them distribution rights only when the for-profit corporation has received all of its distributions and only once certain income thresholds are

met), then what is the reporting organization supposed to report on Schedule R as its share of income and assets of the LLC?

Recommendation:
CHI believes that in Part III, reporting the share of income and assets (columns (f) and (g)) should only be required when all entities in the ownership chain past the reporting organization are entities taxed as partnerships (the simple example above). For Part IV, reporting the share of income and assets (columns (f) and (g)) should only be required when the reporting organization is the direct shareholder in the related corporation and there is only a single class of stock (with no differences among stockholders with respect to voting, dividends, liquidation distributions or other rights).

The instructions should also clarify that stock ownership should be multiplied against income and assets of the corporation with stock ownership, income and assets all being measured as of the last day of the tax year that ends during (or co-terminus with) the reporting organization's tax year.

Catholic Health Initiatives appreciates the opportunity to submit our comments on the Draft 2008 Form 990 Instructions. Please contact Paul Neumann, General Counsel, at 303-383-2678 or PaulNeumann catholichealth.net for additional information on any of the issues we have raised.

Sincerely,

Kevin E. Lofton, FACHE
President and Chief Executive Officer

From: schibner
To: *TE/GE-EO-F990-Revision;
Subject: 990 Draft Instructions-Core Part VIII Lines 1, 2
Date: Friday, May 30, 2008 5:12:23 PM

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990 Draft Instructions - Core Part VIII, Line 1 and Line 2

The design of Part VIII (lines 1 and 2) and the specific instructions are confusing for clubs and associations -- for which Membership Dues are a substantial source of revenue.

Suggestions for reducing the confusion:

Line 1b -

Change the title to "Dues". This one word title is sufficiently vague that the reader is forced to consult the specific instructions, which are reasonably successful in indicating that these are not "club" or "association" normal membership dues.

Line 1f, line 1g -

PLEASE include in the instructions some information on where clubs and associations are to report nondeductible Contributions.

It is not at all unusual for recreational sports clubs to receive nondeductible voluntary contributions, cash and non-cash, from both members and non-members, in support of the particular sport for which the club was organized. (I assume that trade associations, chambers of commerce, etc, also sometimes receive similar voluntary nondeductibe gifts.)

Guidance on this point would be most appreciated (tax preparers are all over the map in how to report this for clubs -- sometimes reporting it as Contributions and sometimes lumping it in with other types of revenue arising from a specific sports competition or exhibition).

****

Line 2. - Program Service Revenue

Program service revenue. (paragraph at the bottom of pg 4 of Draft instructions, Core, Part VIII)

At the end of the paragraph (top of pg 5), revise and add the following:

"....society; registration fees received in connection with a

meeting or convention; and membership dues and fees from club or association members."

Without this addition, the reader may not keep on perusing down four more paragraphs to the explanation given under Common Types of Program Service Revenue.

In the alternative: Common Types of Program Service Revenue could be repositioned to immediately follow the paragraph titled Program service revenue.

Thank you.
S.C. Hibner.

From: Addiscott, Lynn
To: *TE/GE-EO-F990-Revision;
Subject: Draft 2008 Form 990 Instruction Comments
Date: Friday, May 30, 2008 5:18:28 PM
Attachments: SCN_20080530170401_001.pdf

Lynn Addiscott
Senior Tax Officer
lynn.addiscott ahss.org
(407) 975-1492
(407) 975-1475

-----Original Message-----
From: lanier.scanner
Sent: Friday, May 30, 2008 5:04 PM
To: Addiscott, Lynn
Subject: Message from ...

=== message from ScanRouter V2 Professional ===
Message-ID: DELIV-6364730581611184183
=== server: AHSLNRP1 ===

This mail was sent using ScanRouter V2 Professional.

Sender:
Delivered: 05/30/2008 16:10:51
Item Name: SCN_20080530170401

Please note that replies to this mail may be sent to the ScanRouter V2 Professional
server mail account.

For inquires about this server system, refer to:

Adventist
HEALTH SYSTEM

May 30, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Sir or Madam:

Adventist Health System Sunbelt Healthcare Corporation (AHSSHC) is the tax-exempt parent organization to a system of tax-exempt hospital, nursing home, and other healthcare provider subsidiary organizations. The system is known as Adventist Health System (AHS). In conjunction with its role as parent organization to the system, AHSSHC has set forth below certain comments and/or questions with respect to the draft 2008 Form 990 Instructions that were released by the Internal Revenue Service (IRS) on April 7, 2008. The comments below are submitted on behalf of AHSSHC and all of its tax-exempt subsidiary organizations. Please note that our comments below are with respect to broad issues of reporting. Given the magnitude of the draft instructions, we found that the comment period granted by the IRS did not provide us with sufficient time to adequately digest all of the draft instructions and provide feedback to you on all of the issues that we might have otherwise commented on if given additional time.

Our comments below focus on several compensation reporting areas, the reporting of joint venture activities and items of revenue and expense, and the definition of key employee.

COMPENSATION ISSUES

Key Employee

We have a significant concern regarding the breadth of the definition of "key employee". Our organizations are large and complex with multiple levels of administrative personnel that have varying degrees of authority over the assets, income, and expenses. Because the classification of an individual as a "key employee" has an impact on the reporting in the Core Form as well as several schedules we are concerned about the reporting burden that this will cause.

We agree with the American Hospital Association and the American Society of Association Executives that the definition of "key employee," even as revised by the draft instructions, remains too broad and sweeping and should be further refined. Both the percentage threshold (now 5%) and the control standard (management) need to be revised; a threshold well above 5% and a tighter control standard coupled with an upper limit on the number of employees to be

reported – preferably limited to three – should replace the current definition. If experience with the new form ultimately suggests a more expansive definition, the Service should revise it at that time.

Former Highest Compensated Employees

From 990 Core, Part VII, Section A, Line 1a – This section asks for compensation information with respect to officers, directors, trustees, key employees, and highly compensated employees and independent contractors. More specifically, the requested compensation information must be provided for all *former* officers, key employees, or highest compensated employees who receive more than $100,000 of reportable compensation from the organization and any related organization.

We ask that the IRS reconsider the inclusion in this section of *former* highest compensated employees who received more than $100,000 of reportable compensation from the organization in the reporting year unless such persons would be considered disqualified persons under the intermediate sanctions provisions. In the case of *former* highest compensated employees who are not considered disqualified persons, we do not understand why the disclosure of current year compensation for such persons would be necessary. We are not aware of any statutory authority that would require a disclosure of such information. Compliance with this category of employees would require a separate tracking of the top five highest paid employees for each of the years in the five-year look-back period, adding to the administrative burden of completing Part VII, Section A and several of the associated schedules.

Deferred Compensation

Schedule J, Part II, Column (C) – The draft instructions for this column indicate that all deferrals of compensation should be reported in this column, including earnings accrued on deferred amounts and/or increases (but not decreases) in actuarial value, if any to the extent that the increases are greater than 120% of the applicable Federal rate.

We would ask for clarification to be included in the final instruction indicating whether Column C includes activity in qualified plans. The June 14, 2007 Draft 990 was very specific that qualified plans were not included in Column C. The draft instructions appear to be silent on this point.

We do not understand why the total amount to be reported in column (C) would be required to include earnings accrued on deferred amounts and/or increases in actuarial values. Generally, once a deferred amount of compensation has been credited to a listed person, the individual determines investment decisions concerning the amount and particular investment fund in which he or she wishes to invest. Accordingly, the earnings accrued on deferred amounts would vary depending upon the individual's investment choices and on investment market conditions, and would not reflect the true amount that the tax-exempt organization provided as deferred compensation. Similarly, changes in actuarial values are not reflective of the actual amount of deferred compensation provided by the organization to the listed person and may vary depending

upon a myriad of factors. Many of these factors are outside the control of the exempt organization.

In our view, the inclusion of earnings and increases in actuarial value with respect to deferred compensation may provide a misleading picture of deferred compensation actually earned or credited to the listed person. Also we believe that inclusion of these items makes comparisons between organizations and within one organization over time less transparent because actual compensation is clouded by investment performance. It would also seem that if increases in actuarial value were to be disclosed, that decreases in actuarial value should also be disclosed in order to provide a complete picture of actuarial changes.

Additionally, annual information concerning earnings and increases in actuarial value with respect to an individual's deferred compensation account is not typically readily available to the tax-exempt organization that is the sponsor of the deferred compensation plan. Gathering this data would often involve securing the information from a third-party vendor who handles all administrative matters concerning the investment of funds on behalf of employees.

In summary, we believe the inclusion of earnings and/or increases in actuarial value on a deferred compensation amount allocable or set aside for a listed person is administratively burdensome, and detracts from the public's ability to compare deferred compensation amounts provided by tax-exempt organizations to their directors, trustees, key employees, and highly compensated employees due to the impact of market and other risk factors. However to the extent that organizations are guaranteeing a rate of return to the individuals, your suggestion of a reasonable rate of return is very workable. We do not believe that there should be any additional reporting where the rate of return is based on individual investment decisions.

INDEPENDENT VOTING BOARD MEMBERS

Form 990 Core, Part VI, Section A, Line 1b asks for the number of voting members of the Board that are independent. The instruction to Line 1b lists four specific requirements that must be met for an individual to be considered an "independent voting member." We believe that the dollar thresholds and criteria are too restrictive.

For example the limit on total compensation received for non-board member duties all but eliminates any physician that is serving in and being compensated for a leadership position such as Chief of Staff or Medical Director. This limit does not take into consideration that certain positions like Chief of Staff are positions that are appointed by the Medical Staff and serve on the Board because of the position. These individuals are usually compensated by the hospital because of the significant time commitment away from their practice required to fulfill the duties of the physician leadership position. Since management of the hospital does not appoint this position it does not seem equitable that this person is considered to be an interested Board Member simply because the hospital compensates the individual for the services provided on behalf of the hospital for the term of their appointment. We would suggest that the threshold be at least $50,000 and that individuals that serve on the Board as a result of an appointment by an

independent group, such as the Medical Staff of a hospital, be considered per se independent voting members.

The fact that any individual that is listed on Schedule L is not considered an independent voting member is also problematic. For example we have several hospitals in rural communities where they are the largest employer and in one situation provide employment to 20% of the workforce in the community. In this situation almost every household and business has a relationship with the Hospital. Also the requirement does not take into consideration transactions that are in furtherance of our charitable mission such as physician recruitment loans. For the period of time that we require a physician to work off any financial assistance provided in a recruitment situation they will not be considered to be an "independent voting Member."

In defining an "independent voting member" we believe that the current definition is too restrictive and may misrepresent the independent nature of certain boards. We suggest that the dollar limits on defining an independent board member be increased to $50,000 and that consideration should be given to additional categories of independent board members for individuals appointed by an independent body and for unique facts such as when the hospital is a sole community provider or when the reported business transaction is related to the hospital's charitable mission.

JOINT VENTURE REPORTING

Appendix F of the draft Form 990 instructions addresses reporting with respect to joint ventures taxed as partnerships. In a number of reporting areas of the new Form 990, Appendix F requires a "look-through" approach with respect to joint ventures. We have focused our comments below on the applicability of this "look-through" approach to Schedule H. However, our remarks below would also be applicable to the other parts in the core form and the supporting schedules that require a joint venture "look-through" approach.

The draft instructions indicate that the new Schedule H for hospitals should include the activities of a joint venture and the reporting organization's share of revenue and expenses. The Schedule H instructions state that the "look-through" approach would apply to community benefit cost data reported in Part I, community building costs reported in Part II, and bad debt and Medicare costs reported in Part III. The draft instructions do not set forth any minimum threshold level of ownership in a joint venture that would need to exist before the "look-through" approach was applied. As an example, it appears that an ambulatory surgery center joint venture that was owned 20% by a tax-exempt hospital organization and 80% by for-profit entities (which could include private practice physicians) would be required to supply the reporting organization with all the community benefit and other data needed for the tax-exempt hospital organization to include such on its Form 990.

We request that the IRS re-consider the application of this "look-through" approach to joint ventures, in particular with respect to joint ventures whose revenues are insubstantial in comparison to the reporting organization's revenues and, at a minimum, those that are not majority owned by a tax-exempt hospital organization and/or those joint ventures which are

considered to engage in activities that are treated as unrelated business income. It is our opinion that the "look-through" approach is unwarranted and administratively impractical in the case of any joint venture that represents five percent or less of the organization's revenue. We believe that the application of a "look-through" approach to joint ventures creates an undue administrative reporting burden both for the joint venture and for the reporting organization. Typically, the annual information received from a joint venture is limited to the data specified on the Form 1065, Schedule K. The imposition of a "look-through" requirement may require the joint venture to design and implement systems of data collection with respect to community benefit and community building activities that would not otherwise be required. For those joint ventures in which a tax-exempt hospital is a minority partner and for those joint ventures which generate unrelated business income for the tax-exempt hospital partner, the requirement to collect community benefit and community building activity data appears to create an undue reporting burden on the joint venture and may require the joint venture to incur additional costs in creating systems to capture and collect such data.

Further, from a practical perspective, for those joint ventures which are not managed by the tax-exempt organization partner, the requirement to collect this data will require the exempt partner to design and deliver additional information reporting requests to the joint venture and provide sufficient education to the external managing joint venture partner so that the reasons for the additional data request are understood. For those tax-exempt hospital organizations with multiple joint ventures, the process of educating the other joint venture partners and soliciting and gathering data from joint ventures is likely to require a significant amount of time and effort on the part of the exempt hospital without providing meaningful information on Schedule H for those joint ventures which are considered unrelated to the charitable purposes of the tax-exempt hospital. Based upon the reasons as set forth above, it is our recommendation that the "look-through" approach with respect to joint venture reporting be limited to only those joint ventures that represent more than five percent of the organization's revenues and, at a minimum, are majority owned and engaged in activities related to the reporting organization's charitable purposes.

Sincerely yours,

Lynn Addiscott
VP/Senior Tax Officer

Michael E. Saunders
Tax/Compliance Resource Officer

From: Chris Collver
To: *TE/GE-EO-F990-Revision;
Subject: REG-143787-06 - Comments from CA CU League
Date: Friday, May 30, 2008 5:40:41 PM
Attachments: CCUL Comments on Form 990 Instructions.pdf

Attached are our comments.

Regards,

Chris Collver
Regulatory & Legislative Analyst
California and Nevada Credit Union Leagues
(PH) 800.472.1702, ext. 3249

California CREDIT UNION LEAGUE NEVADA CREDIT UNION LEAGUE

June 1, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions
ATTN: SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Madam/Sir:

Re: REG-143787-06

On behalf of the California and Nevada Credit Union Leagues, I appreciate the opportunity to provide comments on the draft instructions to the recently-revised Form 990 and accompanying schedules. By way of background, the California and Nevada Credit Union Leagues (the Leagues) are the largest state trade associations for credit unions in the United States, representing the interests of more than 400 credit unions and their 9 million members.

The Leagues commend the Internal Revenue Service (Service) on its comprehensive efforts to modernize the Form 990, and recognize the need to update the instructions consistent with the new form. However, we have concerns with the draft instructions regarding 1) the reporting of compensation; and 2) group 990 filings.

Reporting of Compensation

The Leagues are concerned that the requirement to report nontaxable expense reimbursements and fringe benefits requires filers to report amounts that do not reflect what most individuals consider to be compensation, and will unfairly exaggerate compensation totals. Therefore, we respectfully urge the Service to develop instructions that reflect reporting requirements that do not include nontaxable expense reimbursements and fringe benefits as "compensation." Also, we suggest setting compensation thresholds that are adjusted geographically to reflect differences in cost of living.

Further, while we appreciate the Service raising the threshold for reporting the five highest compensated employees from $50,000 to $100,000, we believe this step does not go far enough to prevent the inclusion of unintended employees. At a minimum, we believe the threshold should be consistent with that of "key employee," which is set at $150,000. Similarly, we note that former key employees must be reported if their compensation was $100,000 or more. We feel that these elements would be more in alignment if that reporting threshold was also set at $150,000.

Group 990 Filings

Appendix E has been added to the draft instructions, which details instructions directed to group filers. It clarifies that when an organization files a group return (the central organization) on behalf of a group of entities (the subordinates), it must aggregate data unless it is otherwise instructed to list individual data for each subordinate. Appendix E further states that when listing the five highest compensated employees (Core form, Part VII, line 1a), the central organization may not aggregate the data and must include the five highest compensated employees for each subordinate.

We believe that a central organization should be permitted to aggregate this information regarding its subordinates. IRS regulations regarding group returns have long stated that when a central or parent organization provides information on the names, addresses and compensation of officers, directors, trustees, key employees and the five highest compensated employees of subordinates, it can provide the information on a consolidated basis for all subordinates. (26 CFR 1.6033-2(d)(5)(ii)). In our view, if the Service wishes to change this policy, it must do so only after a notice and comment procedure under the Administrative Procedure Act (APA).

Once again, the Leagues applaud the Service's efforts in redesigning the Form 990. We thank you for considering our comments, and look forward to assisting the IRS in working toward a revised Form 990 that will accomplish the Service's goals of transparency without unintended consequences and increased burden on the filing community.

Sincerely,

Bill Cheney
President/CEO
California and Nevada Credit Union Leagues